This is a digital copy of a book that was preserved for generations on library shelves before it was carefully scanned by Google as part of a project to make the world's books discoverable online.

It has survived long enough for the copyright to expire and the book to enter the public domain. A public domain book is one that was never subject to copyright or whose legal copyright term has expired. Whether a book is in the public domain may vary country to country. Public domain books are our gateways to the past, representing a wealth of history, culture and knowledge that's often difficult to discover.

Marks, notations and other marginalia present in the original volume will appear in this file - a reminder of this book's long journey from the publisher to a library and finally to you.

Usage guidelines

Google is proud to partner with libraries to digitize public domain materials and make them widely accessible. Public domain books belong to the public and we are merely their custodians. Nevertheless, this work is expensive, so in order to keep providing this resource, we have taken steps to prevent abuse by commercial parties, including placing technical restrictions on automated querying.

We also ask that you:

+ *Make non-commercial use of the files* We designed Google Book Search for use by individuals, and we request that you use these files for personal, non-commercial purposes.

+ *Refrain from automated querying* Do not send automated queries of any sort to Google's system: If you are conducting research on machine translation, optical character recognition or other areas where access to a large amount of text is helpful, please contact us. We encourage the use of public domain materials for these purposes and may be able to help.

+ *Maintain attribution* The Google "watermark" you see on each file is essential for informing people about this project and helping them find additional materials through Google Book Search. Please do not remove it.

+ *Keep it legal* Whatever your use, remember that you are responsible for ensuring that what you are doing is legal. Do not assume that just because we believe a book is in the public domain for users in the United States, that the work is also in the public domain for users in other countries. Whether a book is still in copyright varies from country to country, and we can't offer guidance on whether any specific use of any specific book is allowed. Please do not assume that a book's appearance in Google Book Search means it can be used in any manner anywhere in the world. Copyright infringement liability can be quite severe.

About Google Book Search

Google's mission is to organize the world's information and to make it universally accessible and useful. Google Book Search helps readers discover the world's books while helping authors and publishers reach new audiences. You can search through the full text of this book on the web at `http://books.google.com/`

PL RESEARCH LIBRARIES
33 06817745 4

THE

TRIAL

OF

LIEUTENANT RENSHAW,

OF THE U. S. NAVY.

INDICTED FOR CHALLENGING

JOSEPH STRONG, ESQ.

ATTORNEY AT LAW,

TO FIGHT A DUEL.

WITH THE SPEECHES OF THE LEARNED COUNSEL,

COLDEN, HOFFMAN AND EMMET.

TAKEN IN SHORT-HAND,

BY WILLIAM SAMPSON, ESQ.

WITH AN APPENDIX,

CONTAINING THE

PROCEEDINGS OF THE NAVAL COURT OF ENQUIRY,

Held by order of the Secretary of the Navy.

NEW-YORK:

PUBLISHED BY FRANK, WHITE AND CO.

NO. 132 WATER-STREET.

1809.

THE NEW YORK
PUBLIC LIBRARY
341964
ASTOR, LENOX AND
TILDEN FOUNDATIONS.
1905

DISTRICT OF NEW-YORK, ss.—Be it Remembered, that on the sixteenth day of December, in the thirty-third year of the Independence of the United States of America, JACOB FRANK and GEORGE WHITE, of the said District, hath deposited in this office the title of a book the right whereof they claim as proprietors in the words following, to wit:

"The Trial of Lieut. Renshaw, of the U. S. Navy, indicted for challenging Joseph Strong, Esq. Attorney at Law, to fight a duel; with the speeches of the learned counsel, Colden, Hoffman, and Emmet, taken in short hand by William Sampson, Esq. with an appendix containing the proceedings of the Naval Court of Enquiry, held by order of the Secretary of the Navy."

In conformity to the act of the Congress of the United States, entitled "An act for the encouragement of learning, by securing the copies of Maps, Charts and Books, to the authors and proprietors, of such copies, during the terms therein mentioned, and also to an act entitled an act supplementary to an act entitled an act for the encouragement of learning by securing the copies of Maps, Charts and Books, to the authors and proprietors of such copies, during the times therein mentioned, and extending the benefits thereof to the arts of designing, engraving and etching historical and other prints."

EDWARD DUNSCOMB,
Clerk of the District of New-York.

Lieut. Renshaw's Trial.

At the request of a number of friends, the publishers had undertaken to furnish the public with the following correct detail of the trial of *Strong* vs. *Renshaw*. It has excited considerable interest. The novelty of the case is acknowledged by professional men, and the causes which led to it are marked with such atrocious perfidy, as to be unequalled, perhaps, in the history of party. The speeches of the learned counsel will be read and admired, while true taste and science adorn the civilized world.

In the unwarrantable interference of Mr. Strong, which led to the prosecution of Lieutenant Renshaw, nothing can be seen which marks the dignified character of the man. How should it be otherwise: Mr. Strong is not very honourably distinguished in the walks of public or private life. But no act has so strongly marked its features as the present one. He commences a formal attack upon a deserving young officer, considering nothing but how he might best expose him and his services to the detestation of his companions in arms, and the national character of his government to contempt. View his conduct in the most favourable light, and it will be acknowledged that he has descended to take a share not only in the narrow views and interests of particular partizans, but in the fatal malignity of their passions. This error is admitted even by his own sect as a capital violation of the most obvious rules of policy and prudence. He has evinced in his conduct a fawning treachery, against which no prudence can guard, no courage can defend. THE PUBLISHERS.

V. *And be it further enacted*, That it shall be the duty of the justices of the courts of oyer and terminer and general gaol delivery, and general sessions of the peace, at every session, to give in charge to the grand jury of the county in which either of the said courts shall be held, to inquire of all offences committed against this act.

VI. *And be it further enacted*, That if any person not being a citizen of this state, shall be convicted in any of the said courts of the aforesaid offence against this act, he shall be fined and imprisoned at the discretion of the court having cognizance thereof, not exceeding five hundred dollars, as a fine, and seven years imprisonment in the state prison at hard labour.

INDICTMENT.

City and County of New York, } ss.

THE jurors of the people of the state of New-York, in and for the body of the city and county of New-York, upon their oath, present that James Renshaw, late of the third ward of the city of New-York, in the county of New-York, mariner, *not* being a citizen of the state of New-York aforesaid, within the twenty-eighth day of October, in the year of our Lord one thousand eight hundred and eight, at the ward, city and county aforesaid, did, by a certain writing, request and invite one Joseph Strong, of the ward, city and county aforesaid, to meet him, the aforesaid James Renshaw, with intent to fight a duel against the form of the statute in such case made and provided, and against the peace of the people of the state of New-York and their dignity.

And the jurors aforesaid, upon their oath aforesaid, do further present, that the said James Renshaw, *not* being a citizen of the state of New-York aforesaid, afterwards, to wit, on the said twenty-eighth day of October, in the year aforesaid, at the ward, city and county aforesaid, did give a challenge to the said Joseph Strong, to fight a duel against the form of the statute in such case made and provided, and against the peace of the people of the state of New-York, and their dignity.

And the jurors aforesaid, on their oath aforesaid, do further present, that the said James Renshaw, *not* being a citizen of the state of New-York aforesaid, afterwards, to wit, on the same day and year aforesaid, at the ward, city and county aforesaid, did request and invite the said Joseph Strong, to meet him, the said James Renshaw, with intent to fight a duel against the form of the statute in such case made and provided, and against the peace of the people of the state of New-York, and their dignity.

RIKER, *District Attorney.*

☞ The second bill of indictment was in the same words, except, that instead of the words *not* being a citizen, &c. it was laid thus: *being* a citizen, &c.

RIKER, *District Attorney-General, opened the cause of the prosecutor as follows:*

GENTLEMEN OF THE JURY,

You are now sworn to try two several indictments against the defendant, lieutenant James Renshaw. The offence charged in the one and the other is the same. But in the one he is stated to be a citizen of the state of New-York, in the other that circumstance is not averred. The reason of there being two indictments is in the statute which provides a different punishment for those who are not citizens of the state from that which its citizens are subjected to. Each indictment charges the defendant in three several ways pursuant to the statute.

1st. That he did, by a certain writing, request and invite Mr. Strong to meet him with intent to fight a duel.

2d. That he gave him a challenge to fight.

3d. That he requested and invited him to meet him with intent to fight.

The evidence which I shall lay before you, in order to prove the truth of this charge, will be principally two letters of Mr. Renshaw, and the parol testimony of Mr. Strong himself, who will state upon oath what passed between him and Doctor Marshall, the second of lieutenant Renshaw.

The first letter is dated October 26, 1808, and is in these words:

Navy-Yard, New-York, October 26, 1808.

SIR,

Some strictures on my character, which appeared in the New-York Commercial Advertiser, of the 2d ultimo, signed, "A Citizen," and which I am since informed by the editor of that paper, you are the author of, demands that I require of you an apology equal to your wanton, offensive aspersion of my reputation.

My conduct relative to the affair which induced you to take so indecorous and injustifiable a liberty with my name, has been scrutinously investigated by a court of enquiry, composed of my peers, and the proceedings of that court now published, shew how far I merited the

censure imposed upon the public. I herewith send you the paper containing the proceedings of the court of enquiry referred to; and under an impression that you will feel no hesitation in making a full and satisfactory apology, I shall wait your answer until five o'clock to-morrow evening.

With due consideration,
I am, &c. &c.
(Signed) JAMES RENSHAW,
Commanding U. S. Gun-Boat No. 40.

Joseph Strong, Esq. Attorney at Law, New-York, No. 49 Partition-street.

The other letter is dated October 28, 1808, and is as follows:

SIR,

The pointed disrespect which has been evinced by you to my communication of the 26th inst. induces me now to employ the service of my friend, Dr. Marshall, of the United States Navy, as the medium of communication between us.

To this gentleman I have *fully* committed my sentiments, in regard to the existing subject of controversy, and given him ample authority to act in such manner as may appear to him most conducive to my honor and feelings.

Your obedient servant,
(Signed) JAMES RENSHAW.

Oct. 28, 1808.

Joseph Strong, Esq. Attorney at Law.

After these letters had passed, either Mr. Renshaw, or Doctor Marshall, as his friend, published——[Mr. Riker was now interrupted by Mr. Colden, who observed, that, although the traverser's counsel had consented to admit the letters or communications bearing the signature of lieutenant Renshaw, they had not admitted any thing to be his which evidently purported to come from another person. What purports to come from Dr. Marshall, we admit to be from him; what is signed by Mr. Renshaw, we admit to be his. *Riker*—Then I shall read a third communication, bearing lieutenant Renshaw's signature, in conformity wit the arrangement stated by the counsel.

These letters, gentlemen, are read to you out of a newspaper, but you are to take that newspaper as a full proof,

because it is so admitted by arrangements made for shortening the trial, to which both parties have consented, and bound themselves. It appears by this newspaper, the Public Advertiser of the 5th November, in which the whole transaction has been published by Mr. Renshaw and Doctor Marshall, that before the insertion of the second letter, which has been read to you, dated October 28, Mr. Renshaw uses this preface or introductory remark, alluding to his former letter of October 26.

"To this letter I received no answer, in consequence of which I addressed him the subsequent note, which was handed to him by Dr. Marshall, of the United States Navy."

And after the second letter follows the third piece, which we give in evidence, which is, as it is called in the language used on such occasions, a posting of him as a coward.

To the justice of this appeal on his courage, and which was again repeated by my friend in still stronger terms, he was equally insensible, and with that cowardice which always marks an assassin, he *positively* refused the reparation demanded. My duty therefore as an officer and a man, requires of me to publish Joseph Strong, attorney at law, as an infamous, evasive coward, and a malignant scoundrel, and I have only to regret, that I have been prohibited by Commodore Rogers, from inflicting on him that *personal chastisement* to which he is so *amply* entitled.

(Signed) JAMES RENSHAW,
Lieut. U. S. Navy.

The following are the observations of Dr. Marshall:

In justification of the above declaration of Lieutenant Renshaw, and that the public may possess all the circumstances which have occurred, I conceive it a duty I owe to lieutenant Renshaw, as his friend in this business, to the government under which I have the honor to hold a commission, and to society, to publish the annexed statement, written by Joseph Strong, attorney at law, and acknowledged by him to be the basis of his conduct to lieutenant Renshaw. It may not be improper to observe, that it was in the first instance the wish of Mr. Strong, that this statement should be considered as a *private* communication, intended only for the eyes of lieutenant Renshaw and his *immediate* friends, and that on my objecting to these terms, it was placed in my possession to make such use of it as I should deem proper. I therefore feel no hesitation in placing it before the public, and shall take the liberty to offer such strictures on the different parts of it as may appear admissible, and consistent with impartial justice.

(Signed) SAMUEL R. MARSHALL.

Mr. Riker stated nothing further, but Mr. Colden observed, that as this statement in the Public Advertiser of the 5th of November, had been partly read by the opposite counsel, he should consider the whole of it to be evidence for the defendant if he thought proper to use it.

1*st Witness*, *Mr. Strong*, sworn and desired to relate the facts, gave his testimony as follows:

Previous to the receipt of these letters, being employed as the attorney of Capt. David Petty, in a suit brought by him against Mr. Renshaw, I had a conversation with Mr. Vanhook in his capacity of attorney for Mr. Renshaw, who requested to know whether that suit could not be amicably settled. I stated that I was fully authorised by Captain Petty to settle it; upon which Mr. Vanhook said he would send to Lieutenant Renshaw provided I would promise he should be free from arrest in coming to town. I pledged my honour that he should.

A day or two afterwards, Mr. Vanhook told me that he had not had it in his power to see or send to Mr. Renshaw, and again asked me if he should be free from arrest in case he came over; and I again said that he should. Mr. Vanhook then said that he was going over to see the officers, or to dine with them, and that he should see Mr. Renshaw, and get him to come over and make up this business. This was about 11 o'clock in the day. I considered this arrangement as agreed upon, and the affair proceeding under it, when I received the letter dated October 26. To it I paid no attention, supposing that Mr. Vanhook had not yet seen Mr. Renshaw, and therefore that all difficulties might still be settled.

About 4 o'clock on the 27th, the next day, a man called on me apparently in the service of the navy or a boatman or marine. He questioned me whether I had any answer for Lieut. Renshaw.

I heard nothing more of the matter till about two or half past two next day, (the 28th) when, as I was sitting in my office, Doctor Marshall, then a stranger to me, called with the second letter.

Q. Who called with the first?

A. I do not know, I was absent from my office.

Colden. That was on the 27th October, was it not?

A. I am not positive as to the day, I did not make a memorandum at the time—I had till the next day to give an answer, but did not till the day following, that Doctor Marshall called and took me aside. I asked him then what was the object of Lieutenant Renshaw, since it appeared he had committed all to him? He said it was his business, though a painful task, to demand some honourable satisfaction. I believe I asked him what that satisfaction was to be.

Colden. You believe, you say?

A. I think I did.

Colden. Will you be kind enough to give us the words?

A. I will as far as I can.

Q. How did he intimate it to you?

A. I am not able to recollect the very words, but the import was a challenge to meet him and fight him in a duel, because I had passed by his letter with such silent contempt; and also for the communication in the first paper. My words were, I am not his man, or he mistakes his man, for I am in principle against duelling; when he pressed this thing, and added, that Mr. Renshaw could not get rid of it otherwise, on account of the stigma it would leave upon his character, I then represented to him the difference of our situations in society. He asked me for an apology. I said I was not prepared to answer him on that head, but I could not admit or deny the publication to be mine till after I had examined it. The thing

then was to be postponed till I should go to the printer, and the next day I was to admit or deny being the author of that piece. Dr. Marshall and I returned and remained in the office. The other persons having withdrawn, he continued to press for an adequate apology; and I repeated that, till I knew whether the publication was mine, I could not say any thing further; and I also repeated that my principles were against duelling. The same day I went down to the office of the Commercial Advertiser—I could find nobody to give me an answer. Next day I called again and found a boy with whom I turned to the file and read the piece. I called the day after that for the manuscript. The Editor told me it was useless to look for it—that he never kept any thing of that kind. However, as my recollection told me that it was the same, except the substitution of the word *I* for the word *we*, in one part of it, I said I considered it as one and the same thing. In the afternoon I I was again called upon by Dr. Marshall, to say whether my mind was made up upon the subject. This was on the 29th. He came accompanied by Mr. Vanhook, who pretended to say that it was an accidental meeting. I was then interrogated whether I was ready to avow myself the author of that piece under the anonymous name of a Citizen, whether it was mine; I said yes. He then called upon me for an answer to the proposition of yesterday, as to making an apology. I said I had a paper prepared which I should make the *basis* of our conversation—that that paper should serve as a *basis* or *projet* between him and me, and all my conversation should be considered as *beginning* and *ending*, and as *bottomed* upon that paper. There had been some mistake in the publication——

Colden. It is immaterial, we have the original, it was published in the Public Advertiser and in the Aurora.

Riker. You did consider it as a challenge to meet and fight?

A. Unquestionably—not so decidedly so, however, in the second interview as the first—not so very pointed on the second occasion.

Colden. But you understood it on both occasions to be unquestionably a challenge?

Witness. Uudoubtedly: on the last it was rather by way of reference to the conversation of the day before; in both the thing was pressed.

Q. What thing?

A. A duel. I said it was nothing to his credit, seeing we were so different in point of age, profession, situation, and responsibilities; I being a married man and father of a family—he without wife or child. With all these inequalities it would tend nothing, I said, to his military fame to challenge one who declared himself adverse to duelling from principle, and determined not to fight.

Q. When you told him your principles were against duelling, what was his reply?

A. That I ought to do it; that I owed it in justice to Mr. Renshaw.

Cross-examined by Colden.

Q. You understood the words of Doctor Marshall to mean a challenge to fight a duel?

A. I did.

Q. Was it not a question whether you would admit the publication?

A. He was athorised to convey such a challenge which he did, or otherwise——

Q. Or otherwise you were to make an apology. The apology then was conditional?

A. It was conveyed to me as a peremptory challenge,

without other explanation, than that either that I should accept it or be published.

Q. When Doctor Marshall went away, did you understand that he had delivered a challenge to you to——

A. Yes, and further——

Colden. Let me ask a question.

Witness. Let me give my full answer.

Q. Had his object been a challenge what more had you to converse about?

A. Only this, that I peremptorily refused to fight.

Q. When he went away the first time how did the matter stand?

A. This proposition was left open for me to say whether I was the author of that piece. But on my part, whether I was or was not, I determined that I could not make the apology.

Q. Was he to call upon you again the next day?

A. Yes.

Q. And for what purpose?

A. To know whether I would avow myself the author of the piece or not.

Q. That was the object then?

A. Yes. I also shewed him the paper I had drawn up: shewed it to him twice to see whether, upon a review of it, and all the circumstances, an accommodation might take place. Doctor Marshall objected to any interview between me and Mr. Renshaw; that his honour was then in his (the Doctor's) hands as the *second* of *Mr. Renshaw*, and he said nothing could pass now but between him and me.

Colden. You will not give me an opportunity of asking you a question.

Witness. I will.

Q. Was there any place or time given, or any arms mentioned?

A. I understand, though I am no military nor fighting man, that the challenged has the election. I, however, did not enter into that, for I refused to fight at all.

Q. Do you recollect his asking a great many questions?

A. There were a great many questions, and he got into a considerable degree of warmth.

Q. Let me ask you then what he said on the part of Mr. Renshaw?

A. He conveyed to me a request or invitation that I should meet him to fight him.

Q. On the second day did he make use of words indicating a challenge?

A. Not so much; they were referable to the expressions of the former day, but in substance they were the same.

Q. When he referred to the conversation of the first day how did he do it? Did he express himself in this manner—You know, Mr. Strong, you know I have brought you a challenge, and I come now to see whether you will accept it?

A. I do not understand what your question tends to.

Q. Sometimes these things act upon men's nerves and they understand differently; I only want to know if you can recollect his words, for after all, that would be the most satisfactory testimony?

A. He came in company with Mr. Vanhook, who sits at your right hand, and who pretended that it was an accidental meeting; I am informed they went to a certain place where they met Lieutenant Renshaw, and had there parted from him although Mr. Vanhook pretended the meeting was accidental. I said I supposed there was no need of secrecy, as Doctor Marshall must have told him what he had come about, and Doctor Marshall said he had.

At the time I met Mr. Vanhook in the street, I had

just parted from Mr. Marshall, and I told him what had passed, and used these words—Your man is chuck full of fight, or chaulk full of fight.

Q. Recollect what else passed.

A. I tell you I cannot recollect any thing more at this interview; I asked Mr. Vanhook whether I had not told him the day before what passed? I told him then I should admit myself to be the author of the paper, notwithstanding there was some variance, such as the word *I* for *we;* yet, as it was in substance the same, I had no difficulty to avow myself the author. Some little conversation ensued, the precise words I cannot recollect; I think I was asked by Doctor Marshall whether I would make an apology. I told him as I had told him yesterday, that I was not going to fight; I told him also of the paper I had drawn up, which should be the *projet* or *basis* upon which all our communications on the subject should be *bottomed.*

After reading this paper a good deal of conversation ensued. Being informed by Doctor Marshall that the apology was not sufficient, I mentioned the difference between us of our age, profession, family, and so forth. He seemed to speak with a greater degree of warmth, and said he was astonished that there should be a man in the community that could make use of such a pretence as a shelter against meeting a gentleman whom he had offended. My answer was that I admitted myself to be the author of the publication, yet that I would not fight. I proposed his taking a copy of the paper; his answer was, that he thanked God he had a pretty good memory. I then told him he should have a copy and that Mr. Vanhook should call for it. I inclosed it in a letter addressed to Doctor Marshall, and handed it to Mr. Vanhook. The principal part Doctor Marshall took in the conversation was urging the propriety of the thing, and objecting to my reasons for not

fighting; and in every sentence resounding the words "*honourable meeting*" "*honourable satisfaction*," and such like terms. I still replied that *I was not his man to fight.*

Q. In all this challenging, was either sword or pistol mentioned?

A. No, Sir, for I would not fight him at all with sword or pistol. Nor I do not think I should fight you, otherwise than with my fist, to knock you down in the street, if I could, provided you insulted me.

The Court. Confine yourselves to the evidence, gentlemen, and leave those controversies.

Riker. You understood it then to be a challenge to fight?

A. Certainly. The letter itself contains enough to shew that; and it would be to want common understanding to conceive it to be any other thing.

Q. What then was the object of the second call?

A. To know whether I was the author of the publication, and whether I would make an apology.

Colden opened the defence of the traverser, with a few prefatory remarks, in a low tone of voice, which, on account of the great crowd, and the situation of the Reporter, he did not distinctly hear. And proceeded—

The defendant is on his trial on two indictments, in each of which he is charged, in the words of the statute, with having, by writing or otherwise, invited Mr. Strong to meet him with intent to fight a duel. It is now my duty to apprise you of the defence which is to be offered on behalf of lieut. Renshaw. As to the written challenge, the paper, which is called such by the counsel for the prosecution, and the written and other printed documents which relate to it, are before you. Fortunately there can be no misrepresentation with respect to the language. But all observations on this part of the case will be reserved for a future period. And

gentlemen, I trust that it will not be difficult to shew you, that there is nothing in the publications themselves which imports a challenge, and to satisfy you that no challenge was intended. As to the rest, Mr. Renshaw's defence is explained in a single sentence, which painful as it is to me to utter, my duty obliges me to express in such terms as that it cannot be misunderstood. It is, gentlemen, that the witness for the prosecution is not to be credited. It is with regret that I find myself constrained, in justice to my client, to put his defence on this ground.

You will find, gentlemen, when we come to consider more attentively the publications, which have been already in part read to you, that Mr. Strong has very exalted ideas of professional duty and privilege upon this occasion. I shall endeavour to act under a due sense of the first. And notwithstanding Mr. Strong's threat to break my head, I shall avail myself of the latter as far as may be necessary. But I wish it to be understood, that for what I say in court I hold myself answerable out of it, and that I shall only claim as a privilege the protection of the court as long as I am in court. It must be expected, that while I endeavour to avoid saying any thing foreign to the merits of the cause, I shall not refrain from saying any thing that I may think ought to be said. At least it seems incumbent on me to take care that there shall be no reason to suppose that I have left any thing unsaid through dread of Mr. Strong's unprovoked threat.

I must repeat, gentlemen, that Mr. Renshaw's hopes of having your verdict in his favour, rest upon his persuasion that we shall be able to convince you, that Mr. Strong, as to the essential parts of his testimony, is not to be credited.

It stands before you under circumstances which always weigh against the credibility of a witness. He has mani-

fested by his conduct in this prosecution, that he is an interested witness; we shall shew you, by his own writing, that he entertains sentiments inconsistent with candour and truth; we shall shew you, that these same writings are inconsistent with Mr. Strong's present relation; we shall prove to you, that he has made declarations utterly at variance with the testimony he now gives; and lastly, gentlemen, he will be contradicted in all that relates to the last interview between him and Doctor Marshall, by a witness at least as respectable as Mr. Strong himself, who was present during the whole of that interview. If you find that the second interview has been misrepresented, it must destroy the credit of the whole of Mr. Strong's relation; if he was wrong in one instance, he may have been so as to the rest.

It is proper, gentlemen, that I should again turn your attention for a moment to the two indictments. There is no other difference between them, than that one of them avers that when the defendant committed the offence, he was a citizen of the state of New-York. The other alledges, that at the same time he was not a citizen of the state of New-York. It is manifest that the defendant cannot be convicted on both. But if a verdict is to be pronounced against him, it is of the greatest importance to the defendant on which indictment he is found guilty; if he should be convicted on the first, the only penalty is disfranchisement for a certain number of years; but if on the last, he is liable to pay a fine of five hundred dollars, and to be imprisoned in the state prison for seven years.

Emmet here interposed, saying that the Court would have a discretion after conviction to moderate the punishment: that the law did not say that it should be seven years, or that the fine should be five hundred dollars; but on the contrary, it limited the utmost extent of the punishment to that degree, leaving the judge at liberty to pronounce as

light a sentence as the case would warrant. And therefore, it was misleading the jury, to impress them with the idea that there was a *certain* punishment.

Colden proceeded. Still, gentlemen, it is very important to see whether Mr. Renshaw is a citizen of New-York or not. He has been domiciliated here for many months, and the word citizen in the act can only be taken to refer to the domicil of the offender. For every citizen of the United States, by becoming a resident in any state, becomes a citizen of that state, and is no longer a citizen of the state from whence he removed; and if Mr. Renshaw, in consequence of his residence here, is not a citizen of the state of New-York, inasmuch as he is not a resident of any other state, it would follow that he is not a citizen of the United States.

Colden then read the piece without date, beginning with the words "To the justice of this appeal," &c. signed James Renshaw, which had before been read by the Attorney-General, and stated to be a posting of Mr. Strong as a coward. The whole of what he read was as follows:

To the justice of this appeal on his courage, and which was again repeated by my friend in still stronger terms, he was equally insensible, and with that cowardice which always marks an assassin, he *positively* refused the reparation demanded. My duty therefore as an officer and a man, requires of me to publish Joseph Strong, attorney at law, as an infamous, evasive coward, and a malignant scoundrel, and I have only to regret, that I have been prohibited by Commodore Rogers, from inflicting on him that *personal chastisement* to which he is so *amply* entitled.

(Signed) JAMES RENSHAW,
Lieut. U. S. Navy.

In justification of the above declaration of Lieutenant Renshaw, and that the public may possess all the circumstances which have occurred, I conceive it a duty I owe to lieutenant Renshaw, as his friend in this business, to the government under which I have the honor to hold a commission, and to society, to publish the annexed statement, written by Joseph Strong, attorney at law, and acknowledged by him to be the basis of his conduct to lieutenant Renshaw. It may not be improper to observe, that it was in the first instance the wish of Mr. Strong, that

this statement should be considered as a *private* communication, intended only for the eyes of lieutenant Renshaw and his *immediate* friends, and that on my objecting to these terms, it was placed in my possession to make such use of it as I should deem proper. I therefore feel no hesitation in placing it before the public, and shall take the liberty to offer such strictures on the different parts of it as may appear admissible, and consistent with impartial justice.

(Signed) SAMUEL R. MARSHALL.

STRONG'S DEFENCE.

1st. Lieutenant Renshaw's first communication was not answered or regarded, because of the previous overtures of Mr. Van Hook as his friend—and whether accidental or voluntary, and unknown to Lieutenant Renshaw, is the same thing, after Mr. Strong had pledged his word to him.

2. As to the remarks of Mr. Strong (accompanying the protest) these were *founded wholly* upon the facts stated therein, (and others not therein mentioned, as alleged by Captain Petty) upon a *full conviction* of the *truth* thereof. And *did not proceed* from any *personal* disrespect towards Lieut. Renshaw, (then and now an entire stranger) but were *only politically* intended, as reprobating the *policy of the government* relative to the *gun-boat system* of national defence, herein operating as a ground of private grievance.

3d. Mr. Strong is not now prepared to admit or deny the facts stated in that protest, *the proceedings of the court of inquiry* relating thereto, being only *exparte*—and an apology, *if any eventually* can be required, cannot with propriety be made, until a *full investigation* has taken place in a court of justice, or the prosecusion pending shall be settled and adjusted between the parties.

4th. Mr. Strong *avows not to have* any or the *least personal disrespect* for or *towards Lieut. Renshaw*—and hereafter, if on a full and impartial investigation of the facts before a *court of law* it should appear to him that his *impressions* in respect to them were erroneous, he will freely and with pleasure retract any thing *he may deem personal.*

5th. Should the remarks complained of by Lieut. Renshaw, (or his friends) be even considered to be harsh, or improper, still Mr. Strong, as the attorney of Capt. Petty, ought not (at this time pending his suit) to admit or deny any thing relating thereto as now required of him. He does not *claim* this as *his privilege* only, but asserts a *liability* professionally, in case of any *publicity*, and deems all publication improper and *illegal.* What has been made must be also deemed so and *expected to undergo judicial notice.*

To the first article of this *infamous* declaration, I shall pay no attention; and sincerely wish that my duty to my friend and the public, would allow me to pass over the remaining articles with the same contemptuous indifference.

Cold indeed must be that heart, and insensible to feeling and honor, that can read without indignation the second article of this base and wanton confession. That an innocent man should be sacrificed to *political* interest—that an officer under the commission of the United

States should be chosen as the instrument for the purpose of villifying the administration under which he served, was an act of unexampled baseness, of which no other man than JOSEPH STRONG, *Attorney at Law*, could possibly have been guilty. Assassins may now sleep in security, since the expounders of the law have become the assassins of reputation. Even while I write, my heart feels indignant that I should be of the same species with such a man! But with what front, I would ask, can he in future, as a member of the law, (a base one indeed) demand justice on a criminal, when he himself stands charged with one of the greatest enormities of which man can be guilty? The thief, who filches the glittering ore of avarice to minister to his necessities, and the assassin who, under the cover of night, seeks incense to his revenge in the blood of his enemy, are not so dangerous to the public, as that man who, sheltered under the garb of sanctity and virtue, clandestinely endeavours to stab the reputation of an innocent and honest man.

I will not for a moment degrade human nature by supposing that Mr. Strong has acted under the authority of the party he espouses; or that there is an *honest man* in that party, who would shelter him from the infamy and disgrace which he has so wantonly incurred. To the feelings of every *true American* I address myself on this subject, and feel confident that in whatever party they may be classed, they will not hesitate with the virtuous indignation of Iago's wife, to call for

——"A whip,
"To lash the rascal naked through the world:
"Even from the east to the west."

In investigatiag the third article, I will not attempt to follow Mr. Strong in the technical phrases of his profession, nor in the tautology of his language, for which, *perhaps*, he may also have a professional licence. My only object is to prove that his trifling excuse for not making immediate reparation to Lieut. Renshaw is false, evasive, and absurd. Did not Mr. Strong exceed his professional duty to his client, when he volunteered himself before the public, for *political purposes*, as the assassin of Lieut. Renshaw's reputation. Could an apology, then, for what he did as an individual, have had the *smallest* unfavourable effect on the part of his client? I think not—and I am also certain that Joseph Strong, *attorney at law*, thinks so too; but obstinacy must have an excuse for cowardice.

There never was a villain who suffered under the hands of the executioner, who might not, with equal propriety, have found an excuse for the act which led to his fate. Joseph Strong is "an *honourable man*", and an *attorney at law*.

In the commencement of Mr. Strong's fourth article, he "avows not to have any, or the least personal disrespect for, or towards Lieut. Renshaw." But how can we reconcile this declaration with Mr. Strong's remarks, signed "A Citizen," and his subsequent conduct when atonement was demanded for the injury sustained? Do these circumstances prove the correctness of Mr. Strong's avowal? Do they not rather prove Lieut. Renshaw the "greater saint, and he the blacker devil."

It would be inconsistent, however, with the respect I owe to the public, to encroach further on their time in exposing the contradictions and absurdities of a man whose whole conduct in this affair has been one tissue of folly. I shall therefore take my leave of Joseph Strong, attorney at law, with observing that a reply from him will not be requested, as he has, by his *ungentlemanly* conduct, rendered himself unworthy the notice of

(Signed) SAMUEL R. MARSHALL,
Surgeon U. S. Navy.

Brooklyn, 4th Nov. 1808.

In reading through this publication, Mr Colden marked by emphasis those passages to which he wished to direct the attention of the Jury, and observed, from time to time, that he would reserve his comments for a later occasion.

Riker asked Mr. Colden on what day Mr. Strongs' explanation was dated—it appeared in the newspaper without date.

Emmet. As it was given after the conversation, and before the receipt of the letter of the 28th, it is referable to the intermediate time.

Defendant's counsel next proposed to examine Doctor Marshall, which was objected to by Emmet, upon the ground that he himself being indicted for conveying the challenge, he was interested to prove that no challenge was intended; and if the present defendant were to be acquitted, he would be able to produce the record of that acquittal, and so would be in this case a witness for himself. He stands now in the light of an accessary called to prove that his principal committed no felony, which he could not be allowed to do by his own testimony in any case where the felony of the principal was the necessary antecedent, and inseparable from his own guilt.

Colden. It is a hardship, although sometimes justified by necessity, that the person charged as *particeps criminis* may be called against the defendant, but not for him. This is when the parties are joined with some indictment. But here they are not indicted as accessaries. Will the

Court then travel out of the indictment? If not, then nothing here shews even that it is the same challenge said to be delivered by the one and sent by the other. But since there is nothing commoner than to bring an approver included in the same indictment, and for the very same offence, to give evidence against another defendants and that under a condition of pardon or conviction, it is surely too much on the other hand to deprive a defendant of the testimony of a witness because that witness is indicted in a separare indictment for a separate offence. In such case no interest but pecuniary interest ought to be objected to, and no such appears here. They are two distinct offences upon record, as well as two different parties. I question if Mr. Marshall could plead the judgment in this case in bar, or even give it in evidence, being *res inter alos acta.* The connexion between principal and accessary is quite different, for that appears upon the record.

Hoffman, who had not before been in court, or taken part in the trial, cited two adjudged cases in this city, the one of a Mr. James and a Mrs. Cullen, where the former was indicted for forging, and the latter for uttering the same instrument, knowing it to be forged. Mrs. Cullen was admitted as a witness for James. Mr. Colden, who first cited this case, had supposed the indictments to have been different, but they were the same except that the charge was different against each prisoner. But there was another case where the indictments were different, where Mr. Maturin Livingston and Mr. Peter R. Livingston were severally indicted for an assault and battery on the same person and at the same time, and one was admitted as a witness for the other, because they were not indicted for the same offence in the same indictment.

Emmet. I find I have more antagonists than I expected, and I am obliged to draw upon my recollection of princi-

ples, as the gentleman has upon his recollection of facts. It was manifest then that the fact charged against James was forgery, and that Mrs. Cullen was charged with an offence quite different, namely, uttering. He might well be found guilty of forging, and she acquitted of uttering; or *vice versa;* and a hundred counts in the indictment could make no difference, if the evidence bore upon a point where the witness had no interest. It is the identity of combination that identifies the crime, and Mrs. Cullen's crime was the same, if she uttered it, knowing it to be forged, whether James was the forger or not. That circumstance could not bear upon her acquittal.

Again, in the case of the assault, the question was, Did the party commit an assault? The one might have given blows, and the other none, and therefore proof that one assaulted was no proof for or against the other. But here it is different, for if there was no challenge sent, there was none carried. The two offences are from their nature incorporated, so that if Mr. Renshaw be proved innocent, doctor Marshall cannot be guilty; therefore in swearing to the innocence of Mr. Renshaw, he would be against the policy of the case in the light of a witness swearing for himself. It is only by the parol proof that the persons can be identified; and from the evidence of the message of one being delivered by the other, there is a complete identification.

It is stated as a hardship, that there is no reciprocity between the prosecutor and the defendant. That a witness charged as *particeps criminis*, may be called against him, and not for him. But it is so in every criminal case; one may be taken as an evidence, and if he chuses to wave his privilege, and accuse himself, he is allowed to accuse the other; yet the defendant never is permitted to call him. It is the common right of the prosecutor. The statute does

not create the party a witness but debars him of a privilege which he had without it. The statute was made to enlarge the power of the prosecutor; it does not therefore follow that it should control it. In civil cases a party to the record cannot give evidence; but in criminal cases he can, if he wave his privilege. But the true question here is, the direct interest and bias which the witness has to make out his own acquittal, for it is impossible that the same jury who acquit the one of sending a challenge, can find the other guilty of bearing it.

Colden. However disposed to admire the ingenuity of my adversary, I still conceive that I am right. The counsel says the case cited of Mrs. Cullen does not resemble the present, because in the former the conviction or acquittal would not operate to the conviction or acquittal of the witness. But that argument holds equally here; for though Mr. Marshall is charged with delivering a challenge, and comes to testify that Mr. Renshaw did not give him authority to be the bearer of a challenge, still if he took upon himself to deliver a challenge, though without authority, he is equally guilty in the eye of the law of delivering a challenge, and so the witness has no interest; and though Mr. Renshaw be acquitted, still he may be put upon his trial.

Hoffman. Whenever the acquittal of a party would, technically speaking, acquit the witness, his testimony will be excluded. For instance—A is indicted for murder; B for aiding and abetting. If A is acquitted, so is B of course; therefore his testimony is exceptionable. Again; when one is indicted for perjury, the other for subornation of the same perjury, the acquittal of the party charged with the principal offence, is a legal defence of the other: but wherever *per se*, it is no legal barrier, the witness cannot be rejected; he must be examined, and his credit left to the jury. And it is no answer to say, that another jury will be less likely

to convict; for unless it be necessarily and conclusively an acquittal, it does not disqualify the witness; and the two instances cited illustrate the principle.

Emmet. Let us come direct to the point. Suppose Mr. Renshaw acquitted, would it not be competent to give the verdict in evidence?

Hoffman. Let us rather put this question; Would he not be still indicted for carrying the challenge?

Emmet. No; for a defendant could not be found guilty or indicted merely for uttering a lie.

The Court allowed the objection to the witness, and Mr. Van Hook was sworn on the part of the defendant; who deposed as follows:

On Tuesday or Wednesday, the twenty-fifth or twenty-sixth of October, I was in Mr. Strong's office, and saw some papers upon his desk, touching the suit he had brought for Petty against lieutenant Renshaw. I remarked to him what I had seen, and made some observations relative to the protest of Petty. In the course of the conversation, Mr. Strong used some harsh expressions relative to Mr. Renshaw, such as calling him a "rascal, scoundrel, coward," and others to the same import. I said to him, that I should be sorry to repeat them to Mr. Renshaw, as from my knowledge of him, I was certain he would call on him. The next day, I think this was Thursday, the 27th, Mr. E. L. Schieffelin, who was present at the conversation at Mr. Strong's office, called at my office, and suggested to me, that he believed that Mr. Strong would be willing to suspend the execution of process against Mr. Renshaw, to give him a chance to come to town, and make some settlement; and that I had better, as the friend of Renshaw, call on him, and make the proposition; adding, that he had seen him a few minutes before go into the clerk's office. I immediately went to the clerk's office, and saw Mr.

Strong, and made him the proposition just mentioned, to which he assented. I at that time informed him, that it was totally unauthorised by Mr. Renshaw, and that I only made it as his friend, with a hope of being able to settle this business amicably. It may be proper here to observe, that I was at this time an entire stranger to the circumstance of Mr. Strong and Mr. Renshaw having any private dispute, or that the former gentleman had taken any part against Mr. Renshaw, other than in his professional character as the attorney of Petty. On that day I could not go to the Navy-Yard; the next I was prevented from going by the wind, and by my attendance in court as a witness. On Friday afternoon, about three or four o'clock, I met Mr. Strong at the corner of Pine-street and Nassau-street. He appeared to be in haste, but made a stop, and said, "I have heard from your friend Renshaw; he is chuck full of fight." This remark induced me to believe that he had challenged Mr. Strong; and I immediately said, "What, he has not challenged you? has he?" Strong replied, "Why, no, not quite that, but he is full of fight." I then told him that I had not been able to go to the Navy Yard, but would certainly go to-morrow. The next day I went to the Navy Yard, and saw Mr. Renshaw, and explained to him the object of my visit. He referred me to Doctor Marshall, with whom I had a full conversation on the subject of my visit. Doctor Marshall communicated to me the occurrences of the day before, and that he was again to call there that day. I then cautioned him, that if nothing had passed at his first interview with Mr. Strong, that he must be careful not to suffer himself to say any thing that might be *tortured* by him to a challenge, and stating, that from my knowledge of Mr. Strong's character, that I was certain he would not fight if challenged; but, on the contrary, would commence a prosecution under the law. Dr.

Marshall thanked me for my information, and then left me for some time. I afterwards came across the river with him, and at his request went to Mr. Strong's office, to witness the conversation that might there take place. I must here beg leave to state, that I did not then say to Mr. Strong, that my meeting Dr. Marshall there was accidental. I could not have said so, as the contrary was the fact. Dr. Marshall made some apology for his want of punctuality, and then asked Mr. Strong if he was prepared to give an answer on the subject of the interview of the day before. Mr. Strong answered that he was: that he was willing to admit himself the author of the publication in the Commercial Advertiser, under the signature of "*A Citizen;*" that there was some variation from the manuscript, but not material, such as substituting the letter *I* for the word *we*; but that in substance it was his publication. Dr. Marshall then wished to know if he was willing to make an apology. He replied, No; that although he would not do so, he would not fight; for though he did not want *courage*, he considered himself as Mr. Renshaw's superior, and urged his family, profession, age, and standing in society, as his reasons for not fighting. At this time nothing had in the most remote degree been intimated that Dr. Marshall wished him to fight. Dr. Marshall then attempted to convince him, that it was more courageous for a man to confess his faults, than to persevere in them, and fight for them. He then urged the situation Mr. Renshaw had been placed in by the publication, as a reason why an apology was due. Mr. Strong said, that although he would not give him an apology, he had prepared a paper, which he was willing to be considered as the *basis* of an amicable settlement of the controversy between Petty and Renshaw, and that after that he would have no objections to making an apology. He then read the paper which has

been published. I proposed that Dr. Marshall should take a copy of it for his friend Renshaw. Dr. Marshall refused, unless he was permitted to make such use of it as he might deem necessary ; which after some observations from Mr. Strong, was agreed to: As he objected to an apology because it might prejudice the cause of his client, I attempted to convince him of the absurdity of that reason, and urged, that as he had separated his professional from his private character, in making the remarks on Mr. Renshaw, he could, without admitting or denying the fact stated in Petty's protest, make such an apology as would satisfy Mr. Renshaw. He seemed to think the contrary, and persisted in his refusal. Mr. Strong then proposed an adjustment of the suit, and afterwards that an apology might be had. Dr. Marshall then read the paper Mr. Strong had prepared, and said there ought to be a present apology. Mr. Strong said he would make none. I then asked upon what terms the suit could be adjusted ; he said it might be settled upon payment of money ; but whether one thousand or five hundred dollars would be taken, he would not mention the sum at present. Much conversation took place between Dr. Marshall and Mr. Strong, without effect, and we prepared to leave his office. After Dr. Marshall had put on his coat, he said to Mr. Strong, as nearly as I can recollect, " Then you admit or aver yourself the author of the Remarks, and refuse to make him an apology ?" Mr. Strong answered " Yes." Then said Dr. Marshall, " Do, you think, sir, that a gentleman, wounding the feelings of another, ought not to make him *honorable satisfation ?*" Mr. Strong said " I do not know what you mean by honorable satisfaction ; it may be given in a room : but if you mean fighting, Doctor, I am not your man, for the reasons I have already given." Doctor Marshall then said, that it was his duty to apprise him, that if he would not make

Mr. Renshaw an apology, he must expect to meet the effects of his displeasure. Mr. Strong said, he hoped there would be no combination against him. At this remark Dr. Marshall seemed indignant, that he should be supposed capable of being the friend of a man that could combine with others for any dishonorable purpose; and so expressed himself. We then left the office of Mr. Strong.

Question by the Court. Was there any question touching a challenge?

Witness. If I understand the English language, sir, there certainly was nothing in the world. I think if there had, I should have understood it as well as any other gentleman now present. Dr. Marshall said to Mr. Strong, "I understand then, sir, that you avow yourself the author, and refuse an apology. Do you not think that a gentleman so situate ought to give honorable satisfaction?" His answer was, his standing in society, his family, his profession, and the difference of their age; all very good reasons it must be admitted, and with which he seemed strongly impressed. Doctor Marshall then appealed to Mr. Strong, whether his conduct had not been proper and amicable during the whole transaction. Mr. Strong answered, that it had been gentlemanly and amicable throughout, and that he was sorry it had not had its effect. On going out, Dr. Marshall asked me, if any thing he had said could be construed into a challenge. I said no, it could not.

Cross-examined by Riker.

Q. Between the first and second conversation you say you met Mr. Strong. Did you ask him if he had been challenged?

A. He said, Your man is chuck full of fight. And upon that I asked, Has he been challenging you? To which he answered as I have already mentioned.

Q. Was there nothing at the second conversation that could import a challenge?

A. No; Doctor Marshall said a great deal of pains had been taken by party editors to make a breach between the officers and the citizens, and that it was better, and his wish, to heal it rather than to widen it.

Emmet. Do you recollect any conversation, Mr. Van Hook, as to Mr. Strong's being father of a family?

A. Yes, Mr. Strong said so, and Dr. Marshall answered—and I also have a family.

Q. How did you understand that?

A. I understood it as general conversation, that a man should not do any thing to injure the feelings of a gentleman, and then shelter himself under that pretence.

Q. Do you recollect these words, or such as these—since then you will not make him satisfaction you must expect the consequences?

A. Mr. Strong said he was not afraid to meet him, but hoped there would be no combination. Doctor Marshall appeared indignant at that expression.

Q. Did not Doctor Marshall require honourable satisfaction?

A. He said words to this import—So then you have avowed yourself the author of that piece and refuse to make any apology or honourable satisfaction.

Q. Do you know from what part of the U. States Mr. Renshaw is?

A. I have understood he was from Philadelphia, but cannot say whether from himself or some other person.

Hoffman. Were Strong's words "an amicable settlement?"

A. Yes, and on Wednesday last, in speaking of Doctor Marshall, he said he wondered that one who had behaved so honourably should afterwards act so differently.

Mr. Strong. It is true enough, I did not at first know that I had to do with a snake that would so soon turn and bite me.

Here the Court interposed and desired that there should be no such interruptions.

Commodore Rogers sworn.

When the two notes were shewn to him, the officers said it was their intention to demand of Mr. Strong an apology, and if he refused that, to bring him before the public in such a way that if there was any challenge it might come from himself. I advised Dr. Marshall to take with him some person versed in the law that he might not, through incautiousness, commit himself; for if Mr. Strong should not be an honourable man he might be committed.

Q. By the Court. Were those notes shewn to you, to see whether they could be construed into a challenge?

A. They were sent by my consent expressly upon the opinion that they could not amount to a challenge.

Q. By Riker. Did you send them, Commodore Rogers, or consent to their being sent, in order to induce Mr. Strong to give a challenge, or as in themselves not amounting to a challenge?

A. I did not think they were meant as a challenge, but knew that Mr. Strong was a lawyer, and thought it best that if he did not make an apology he himself should be obliged to come forward.

Q. By Emmet. Were these two letters shewn to you at the same time?

A. No, but *as* they were delivered, at different times.

Q. Where was Lieut. Renshaw stationed?

A. Near New-York, at the U. S. Navy-yard.

Emmet. Was he not subject to the call of the Secretary of the Navy?

A. Yes, he had generally been in the navy, he was 7 or

8 years in that service, had been a year stationed here, occasionally boarding in New-York, and sometimes in Brooklyn.

It was now proposed to call witnesses to the good character of Doctor Marshall, which was over-ruled, as his character was not in issue, nor in any manner impeached.

Mr. Strong. I never intimated to Mr. Van Hook that I had not been challenged. As soon as I had said those words, 'your man is chuck full of fight,' I passed on about my business. I have no recollection of Mr. Van Hook's asking me if he had challenged me, but I am very certain I never said Mr. R. had not challenged me, for I was always of opinion that there was contained under the words used, however equivocal, a direct call upon me to fight. Doctor Marshall said several times, you have nothing to accuse me of; and I answered no, you have acted the part of a sincere friend. I once or twice raised my finger when he made use of certain expressions, but said nothing personal. You say these assertions are not true of Petty. I raised my finger again several times, and as he got up to go away, he was standing near me with a chair before him, leaning on it; he said he had a still more disagreeable task to perform, but that it was a part of his duty. Since you will not make an apology, nor give him satifaction, you must expect to meet his resentment. I said, very well, I expect that, but I hope there will be no combination.

Hoffman now called upon Mr. Van Hook to give his reasons for believing the words were, honourable reparation, or satisfaction, and the witness repeated what he had before said, that he was confirmed by his own answer to Doctor Marshall's question immediately on going away—that nothing had passed which could be interpreted into the delivery of a challenge; and also because Dr. Marshall had attempted to reason Mr. Strong into the belief that it

was more honourable for a gentleman when he had erred, to make an apology to one he had injured, than to refuse it.

Hoffman next proposed to examine witnesses to prove the character of Mr. Van Hook, as to his correctness and accuracy in all his transactions.

Charles Graham, Counsellor at Law, sworn.

Witness. I studied law in the same office with Mr. Van Hook, and was his most intimate acquaintance. He was always remarkably exact; so much so, that I have never known him to make the most ordinary or the most trifling mistake.

Q. Is not that his general character, that of being extremely accurate?

A. It is certainly.

Q. by Riker. How is Mr. Strong's character in that respect?

A. I never have had any particular acquaintance with him, so as to judge.

The Court. Gentlemen, you are the best judges of the course you take; but I do not see the importance of this testimony.

Stephen Price, Counsellor at Law, sworn.

Witness. I have known Mr. Van Hook seven or eight years, and believe that he is in all his dealings true and correct, and that is his character.

The Court. I think this seems admitted. Is it necessary to go further?

Colden. Do you know Mr. Strong's character?

A. There is a difference. I should say that his character was different from that of Mr. Van Hook. I do not look upon Mr. Strong as a respectable man. He is a man with whom I should wish to have nothing to do.

Q. by the Court. What is the general reputation of Mr. Strong as to veracity?

A. A great many people speak ill of him: that is his general character as far as I know.

Colden. How is he estimated by the gentlemen of the bar?

A. In that respect also I take them to be two very different men.

Cross-examined.

Q. Have you ever had any disagreement or quarrel with Mr. Strong?

A. I have found him disagreeable in business; but I don't see how I could have a quarrel with Mr. Strong.

Alpheus Sherman, Counsellor at Law,

Had been four or five years acquainted with Mr. Strong.

Q. Are you acquainted with his character as a man of veracity?

A. Not perfectly.

Q. Do you know him to be a man not entitled to credit on his oath?

A. I do not.

Q. What is your opinion of his character?

A. It is not so good as that of other gentlemen of the bar.

Q. by the Court. What is his general character as to veracity?

A. From my individual opinion of Mr. Strong, in any difference between him and Mr. Van Hook, as in the present case, I should give a preference to the veracity of the latter gentleman.

Cross-examined.

Q. Has there not been a dispute between Mr. Strong and you?

A. There has, in relation to professional business in the course of practice with him as an attorney.

Mr. Strong now called upon several gentlemen of the bar by name to come forward and give testimony in favour of his character.

Benjamin Ferris, Esq. High Sheriff of the City and County of New-York, sworn,

Stated that Mr. Strong did business for a length of time in the same office with him, and was always very cautious and very correct, particularly in drawing up affidavits.

Albert Herring Counsellor at Law.

Witness understood that many gentlemen of the bar had disputes with Mr Strong on account of his warm or passionate disposition, but would give as much credit to his affidavit as to that of any other person whatsoever.

Mr. James Anderson, sworn.

Had known Mr. Strong two or three years—never heard any thing to impeach his character till to day.

Here the evidence closed.

MR. COLDEN.

May it please the Court.—Gentlemen of the Jury,

Feeling as I do that the cases which you are now to decide depends entirely on the testimony of Mr. Strong, I cannot proceed to address you without once more expressing a sincere regret that I have now to discharge the painful duty of examining what credit is due to that testimony. I say the event of the prosecution must rest upon the opinion you may form of the testimony of the witness for the people: because as to the charge against the defendant for having given a challenge in writing, and the printed documents which have been appealed to, to support that charge, I feel no apprehension that you can be led to such a con-

struction of them as will warrant a conviction. I shall, however, in the first instance, ask your attention while I make some few observations on this part of the accusation. I think it must appear to you that neither of the notes from Mr. Renshaw to Mr. Strong are in themselves a challenge, and that the other publication of Mr. Renshaw, so far from importing that he intended either of the notes as a challenge, or that he had authorised Dr. Marshall to invite Mr. Strong to meet him to fight a duel, shew that Mr. Renshaw had no other design than to induce Mr. Strong to make him reparation by a public acknowledgement and apology, and to apprise him that if he did not, in this respect, act honourably, he must expect the vengeance of the man he has so grossly and wantonly injured.

As to the first note, dated 24th October, from Mr. Renshaw to Mr. Strong, I do not expect to hear it contended that there is any thing that imports a challenge in this: and I only directed your attention to it that you may observe with what view or object Mr. Renshaw sets out on this business. Having in his possession what he supposed was evidence of the injustice of the charge which Mr. Strong had made against him by a piece published in the newspapers, under a fictitious signature; he communicates this evidence to Mr. Strong, and demands nothing but "an apology equal to the wanton offensive aspersion of his reputation."

Mr. Strong having treated the communication with entire neglect and contempt, Mr. Renshaw prevails on his friend, Dr. Marshall, to call on him with a second note, and this note it is said is the written challenge.

And yet what are the words of this note, which can be tortured by the ingenuity and ability of the learned counsel opposed to me, into an invitation to fight a duel? Is this a challenge, because Mr. Renshaw says he has autho-

rised Dr. Marshall to act in such manner as may appear to him most conducive to his honour and feelings? When you refer to Mr. Renshaw's first note, and find that his only object was to obtain an apology from Mr. Strong, is it not more reasonable to suppose, that he meant that Mr. Strong should understand from this last note, that as he (Mr. Strong) had not thought proper to give an answer to his first letter, he had now employed his friend Dr. Marshall, to be the medium of communication between them: that through Dr. Marshall he meant still to insist on an apology from Mr. Strong, and that as to the nature and extent of that apology, he had fully committed himself to Dr. Marshall, and had left him to act in that respect as he might think proper. I ask again, is not this a much more reasonable construction to put upon this note, than by violating its terms, to construe it into a challenge? Again, Dr. Marshall was to act as might be most conducive to the honour and feelings of lieutenant Renshaw. Certainly that which would be most conducive to the honour and feelings of Mr. Renshaw would not have been to fight Mr. Strong. I do not believe that Mr. Renshaw, more than any other man, though by profession a soldier, likes fighting merely for fighting's sake. We may therefore believe, that as an apology would have been as conducive to the honour of Mr. Renshaw as a duel, it would have been as agreeable to his feelings; and that therefore when Mr. Renshaw says to Dr. Marshall, "Act as may appear to you most conducive to my honour and feelings," he intended that Dr. Marshall should act so as to procure from Mr. Strong an apology.

But, gentlemen, if this note be a challenge, I do not know what may not be taken for one. And if this prosecution is successful, I shall not be surprised to see some of our fair ladies sent to the bar, to answer for this offence, and to see

a card of invitation to tea, brought in evidence against her to prove that she really intended by it an invitation to her neighbour to fight a duel.

But if we consider this note in connection with the testimony of Commodore Rogers, can there be a doubt as to what Mr. Renshaw intended by it? You find that the Commodore as well as Mr. Renshaw and his friend, had formed a pretty just estimate of the character of Mr. Strong. They foresaw what would be the course he would pursue if Mr. Renshaw or his friend should put themselves in Mr. Strong's power; they knew him to be a member of the law, and knew that he would not hesitate to avail himself of the law for protection or persecution.

If Mr. Renshaw, after his acquittal by the Court of Inquiry, had suffered the thing to remain there without seeking an explanation or apology from Mr. Strong, he would have been disgraced in his profession. The Commodore was determined that the honour and reputation of his young soldier should not be sacrificed to the aspersions of Mr. Strong; at the same time he was resolved that Mr. Strong should not have it in his power to make him a victim of the laws. The commodore's design was that Mr. Renshaw should do any thing that he might legally do for the preservation of his military character—that he should place himself in such a situation that there could be no doubt of his courage, or of Mr. Strong's want of it—that this should be done by a note which while it was not an invitation to fight, might intimate to Mr. Strong that Mr. Renshaw was very willing to meet him if he (Mr. Strong) could be provoked to send him a challenge. With these views and designs Commodore Rogers read the note and advised its being sent; and at the same time, in his conversation with Doctor Marshall, cautioned him very particularly against putting himself or his friend in the power of

Mr. Strong, by saying any thing to him that could by any possibility be taken for a challenge.

Let us, after these observations, once more turn to the note; and now permit me to ask, Is it not perfectly consistent with the design with which Commodore Rogers tells you that it was written? Suppose Dr. Marshall had been admitted as a witness, and we could have proved by him that Mr. Renshaw had addressed these words to him; "How unjust and dishonourable it is in this man to refuse to acknowledge his error, and make me an apology, after I have given him the fullest evidence that I did not merit the bitter charges which he made against me. What am I to do with him? If I let the thing remain here, you know well that I shall be degraded; if I challenge him, he will prosecute me. In this delemma I have determined that you shall visit him; I will give you a letter to him, in which I will tell him that I have fully communicated myself to you, and that I left it to you to say what kind of apology ought to satisfy my honour and feelings. You shall demand an apology of him, and if he refuses to make one, let him know that he may expect my vengeance: let him know that I will insult him wherever I may meet him, and that I will publicly post him as a coward and a scoundrel. Should this provoke him to give me a challenge, you know my mind on that subject. Thus I may expose his cowardice and save my own reputation, without putting myself in the power of such a man:" Had we proved, gentlemen, by Dr. Marshall, who we attempted to examine as a witness, declarations like these from Mr. Renshaw, at the time he prevailed on Dr. Marshall to visit Mr. Strong, would you think there was any thing in the note inconsistent with them? And after the testimony of Commodore Rogers, is it not very unnatural to suppose, that some such conversation did pass between Mr. Renshaw and Dr. Marshall?

I think you cannot hesitate to say, that the note does not in itself import a challenge, and that there is no evidence before you that it was intended as one; but, on the contrary, that there is evidence that Mr. Renshaw never had a design to challenge Mr. Strong, though he may have been anxious to provoke Mr. Strong to challenge him.

Perhaps a rigid moralist would say there is as much offence in endeavouring to provoke a man to give a challenge, as there is in directly inviting him to fight a duel. This is a case of conscience which it is not my business to discuss. It is sufficient for me to know, that in a court of law the things must be considered as distinct, and you cannot convict the defendant of giving a challenge, if you should believe that he only intended to provoke another to send him a challenge.

If this note was a challenge to fight a duel, where was the meeting to take place? When and with what arms were they to fight? All these things are necessary preliminaries to a duel; and if no arrangements of this sort were made by the note, then the note of itself is not a challenge. Whether the omission of these things in the note were supplied by parol communications from Dr. Marshall, which we admit they might have been, you will perceive is not to be considered just now.

Hitherto the discussion has been confined to the note, and I have dwelt longer on this subject than I at first supposed would be necessary, because I think I have perceived that the counsel for the prosecution means to direct their whole force to this point, very properly, I think, feeling more confidence in their own ingenuity than in Mr. Strong's testimony. I shall not, however, dwell longer on this part of the case, than to remark, that from Mr. Strong's own declarations to Mr. Van Hook, and from his own publication, it will appear, that on the day after he had the first

interview with Dr. Marshall, he did not consider that he had been challenged. No, gentlemen, this challenge is a chimera of his own imagination of very late birth, and which is fostered and nourished by his enmity to the defendant.

So much, gentlemen, for the note, which is said to be the challenge. Let us next turn our attention to Mr. Renshaw's communication to the public, which is called the posting of Mr. Strong, and to Dr. Marshall's observations upon it, which have been read to you not only as evidence that the note of Mr. Renshaw was intended as a challenge, but as evidence that a challenge was given by Mr. Renshaw through his friend Dr. Marshall.

In that part of the appeal to the public which is under the signature of Mr. Renshaw, adverting to the note which has just been considered, Mr. Renshaw says, "To the justice of this appeal to his courage, which was again repeated by my friend in still stronger terms, he was equally insensible," &c. "he positively refused the *reparation* demanded," &c. "I therefore publish Joseph Strong, attorney at law, as an evasive coward," &c.

It appears to me that before the counsel for the prosecution can have the advantage they expect from these publications, they have this very difficult task to perform; that is, they are to persuade you that there can be no other appeal to a man's courage than to ask him to fight; that to demand reparation for any injury, is to demand of a man that he will take his chance of shooting you; and that no man can be an "evasive coward and a scoundrel," but one who has refused a challenge.

I do not believe, however, that you will very readily adopt such sentiments. I rather hope that you will agree with me, that true courage consists in daring to acknowledge an error, and to do justice to those who we may have wronged. If Mr. Strong had basely and wantonly slander-

ed Mr. Renshaw, if when he had before him proofs of the innocence of Mr. Renshaw, he dared not do away the slander and make him an apology for fear of the injury it might do his own reputation, it was arrant cowardice. And if an acknowledgement and apology so justly due to Lieut. Renshaw was denied under the pretence of professional duty and privilege, what is he who avails himself of so pitiful a subterfuge but an "evasive coward?" Believe me, gentleman, there are many men who would undauntedly expose their breasts to the muzzle of a pistol, or brave danger "even at the cannon's mouth," who would not have courage to humble themselves to an acknowlegement of an error. But it was this magnanimity, this noble courage which Mr. Renshaw expected to find in Mr. Strong, but he found Mr. Strong destitute of it, and it was not because Mr. Strong would not accept a challenge, not because he wouldnot fight a duel, that Mr. Renshaw called him coward, an evasive coward.

I expect by and by to hear it said by the counsel for the prosecution, that there are certain terms in these publications which, when used on an occasion of this sort, have a different meaning from that which they ordinarily bear, that the schools of honour have a language of their own. Not having been nor wishing to be a graduate in those schools, where I believe, unhappily for mankind, many principles of false honour are taught, I cannot pretend to be a scholar in their language. But, gentlemen, if the words coward and courage may bear a different signification from that in which I say Lieut. Renshaw used them, what is to become of the word reparation, which is more than once used in these publications, in reference to the demand which Mr. Renshaw had made on Mr. Strong

Mr. Renshaw, in his publication, says Mr. Strong refused the *reparation* demanded, and Doctor Marshall, in

that part of the publication which is under his signature, says he only wishes to prove that Mr. Strong's excuse for not making *reparation* to Lieut. Renshaw is evasive, &c. Now if the demand which Mr. Strong refused had been to fight, could it have been said that he refused *reparatian?* I don't see well how a person who fights me can be said to make me *reparation*, particularly as he may chance to hit and I to miss, and then I should certainly have very bad *reparation;* and so I cannot see very well how one who refuses to fight me can be said to refuse me *reparation.* But if a man has slandered me and I ask him to do mej stice by an acknowledgement and apology, then indeed I ask him for reparation; and if he complies with my request, he then makes me reparation because he does away the slander and leaves me the enjoyment of an unsullied character.

If it had been said that Mr. Strong had refused to give Mr. Renshaw *satisfaction* it would have been a word much more apt to convey the meaning that the counsel for the prosecution wish to give to the word reparation; and the use of the word *satisfaction*, in relation to duelling, is so appropriate that it is highly improbable that Mr. Renshaw and Doctor Marshall would have availed themselves of any other, if they had meant to say that Mr. Strong had refused to fight.

I cannot but flatter myself that these observations are sufficient as to the printed documents which appear under the signature of Mr. Renshaw and Doctor Marshall; we must now consider the parole testimony of Lawyer Strong, and in doing this I shall take in connection with it the very curious, I had nearly said the very infamous, piece which appeared under the signature of Mr. Strong, and was given by him to Doctor Marshall at the second interview between them. Mr. Strong's testimony is very ex-

plicit. He says, at the first interview between him and Doctor Marshall, Doctor Marshall repeatedly and explicitly invited him to meet Mr. Renshaw to fight a duel. If you believe Mr. Strong, and then can further believe, that Mr. Renshaw authorised Doctor Marshall to give Mr. Strong this invitation, of which, however, we insist there is no evidence, then indeed gentlemen there is an end of the cause and you must find the defendant guilty. We were in hopes that this part of the case would not have solely rested on Mr. Strong's testimony. But I must again remark how unfortunate for us it is that the only person who could corroborate or invalidate the testimony of Mr. Strong, has, on account of technical objection, been excluded as a witness; therefore as to what passed at the first interview we can only appeal to Mr. Strong: and if, gentlemen, you shall think that in some part of his testimony he has been a pretty good witness for the prosecution, we hope to shew you that in certain other parts he has been no very bad one for the defendant.

Mr. Strong says that Doctor Marshall challenged him in the early part of the first interview between them, and yet he admits that Doctor Marshall's first demand was to know from Mr. Strong whether he was or was not the author of a piece against Mr. Renshaw, which had appeared in the papers under the signature of 'A Citizen;' that he, Mr. Strong, refused to avow or deny that he was the author of that piece until he should have had an opportunity of examining the file of papers in which it was printed. That Doctor Marshall, to give him time to make this examination, left him, after having made an appointment with Mr. Strong to meet him the next day, when Mr. Strong was to say whether he was or was not the author of the piece in question; and if he acknowledged himself to be the author then he was to say whether he would or would not make

such an apology as would be most conducive to the honour and feelings of Mr. Renshaw.

It must be always remembered that there is not the least pretence that there was any other cause of controversy between Mr. Strong and Mr. Renshaw than that Mr. Renshaw suspected him to be the author of the piece signed 'A Citizen.' Now as it is admitted that one object at least of Doctor Marshall's visit to Mr. Strong was to ascertain whether he had or had not published this piece; and as he gave Mr. Strong time to give his answer on this subject, is it not most unnatural to suppose that Mr. Strong acknowledged himself to be the author, and before Mr. Strong had given him any answer, and before he had refused to make an apology, that Dr. Marshall should have challenged him? To suppose this we must imagine that Dr. Marshall addressed Mr. Strong in words like these, "Sir, Lieutenant Renshaw suspects that you are the author of the piece signed 'A Citizen,' I call upon you as his friend to know whether you are or are not the author, and if you are I demand an apology of you. But whether you are or are not the author, and whether you will or will not make an pology, you must fight Lieutenant Renshaw—I will give you till to-morrow to avow or deny the piece and to determine whether you will or will not make an apology—but yet I now challenge you to fight Lieutenant Renshaw."

Can you, gentlemen, believe that Doctor Marshall's conduct was so senseless and absurd?

And here, gentlemen, let me call to your recollection the declaration Mr. Strong made to Mr. Van Hook, when Mr. Van Hook met him in the street, after he had had the first interview with Doctor Marshall, at which interview he says he received the challenge. On meeting Mr. Van Hook, Mr. Strong says to him, "well, I have seen Doctor Marshall, your man is chuck full of fight." What, has he

challenged you? says Mr. Van Hook—"no, not quite that," was the reply of Mr. Strong. Now if you believe Mr. Van Hook, is not Mr. Strong in contradiction with himself? Mr. Strong, to be sure, does not recollect the latter part of this conversation; and probably you will be told that the conversation took place at a time when Mr. Strong's mind was loaded with the variety and importance of his professional concerns; that it was made at a time when he was driving through the streets hunting up some sheriff, or looking out some miserable wretch for sheriff's prey; and that therefore it was a heedless conversation and made no impression on the mind of Mr. Strong—For I do not believe that there will be an attempt to impeach the credibility of Mr. Van Hook.

I will not, gentlemen, waste your time by anticipating arguments of this kind. When I consider to whom they will be addressed, I have no fears as to their effect, should they be resorted to by the adverse counsel.

If we take into consideration what passed at the second interview, even according to the relation of Mr. Strong, we shall find many circumstances which must tend to shew that no challenge was given at the first interview, and which, as it seems to me, prove that Mr. Strong till lately never entertained an idea that Dr. Marshall challenged him when they met the first time. In the first place, Dr. Marshall's second visit to Mr. Strong, and Mr. Strong then offering any apology at all, are utterly inconsistent with the fact of his having received a peremptory unconditional challenge before that time. But the language of this apology itself is directly at variance with the idea of a previous challenge having been given. To make this appear to you, gentlemen, I will read to you this very curious production; and that I may not be under the necessity of recurring to so disgusting a performance again, I shall, as I proceed in

the reading, make some observations on its style and language. These observations I shall apply at another time; for my present purpose is only to make you observe that Mr. Strong, when he wrote this piece, could not have supposed that he had been challenged.

First, let it be remarked, that Mr. Strong is a member of a learned profession; of course a scholar: part of his profession is the science of special pleading, to excel in which it is necessary to weigh with the most scrupulous exactness the meaning of every word that is put on paper. If Mr. Strong was in the right use of his senses when he wrote this piece, we may expect to find upon it some marks of his professional skill. Let us examine it.

Mr. Colden read the first paragraph, and then continued:—To this paragraph I have nothing to say, but that it is not intelligible. The second paragraph is a rare specimen of original composition. Let me read it to you.

"As to the remarks of Mr. Strong (accompanying the protest) these were founded *wholly* on the facts stated therein, (and others not therein mentioned, as alledged by Captain Petty) upon full conviction of the truth thereof." Now these are most curious remarks indeed, that have their whole foundation on certain facts, and yet are founded on some other facts besides those on which they are wholly founded. But which are the facts as to the truth of which Mr. Strong had a full conviction? Were they those upon which the remarks were wholly founded, or were they those upon which the remarks were not founded? It must have been the last, gentlemen, because if Mr. Strong did believe the facts stated in the protest, he never could have said as he has done in this same paragraph, that his remarks did not proceed from any personal disrespect to the character of lieutenant Renshaw; and he could not have said as he has done again in the same publication, "Mr. Strong avows

not to have any or the least personal disrespect for or towards lieutenant Renshaw."

No, gentlemen, the changes contained in that protest, and to which Mr. Strong attempted to give strength and currency by his remarks in the public papers, under an anonymous signature, were of so odious a nature, that no man who believed them could have a personal respect for lieutenant Renshaw; but, on the contrary, he must have been considered, as long as these facts remained uncontradicted, as having violated the duties of his profession, as being regardless of the rights or liberties of his fellow-citizens, and as wanting the common feelings of humanity.

I am sure you, and every honest man, be he of what party he may, will hear with indignation the next sentence. After having said that his remarks did not proceed from any disrespect to lieutenant Renshaw, Mr. Strong says, that "they were only intended as reprobating the policy of government relative to the gun-boat system." I ask, gentlemen, your particular attention to this disgraceful confession, though it is not for the purpose of making use of it at present that it is now read.

Mr. Colden continued to read through Mr. Strong's remonstrance, with many remarks on the absurdity of the composition. When he came to the last paragraph as follows:

"He does not claim this as his privilege only, but asserts a liability professionally in case of any publicity, and deems all publication improper and illegal. What has been made must be also deemed so, and expected to undergo judicial notice."

This is certainly something more learned than English. It must be that language which I have heard of in my infancy, called Hebrew Greek.

Riker. These may perhaps be typographical errors.

Colden. It may be so. It is a pity the printer is not here to take some more of the errors of his performance on his shoulders. But, gentlemen, the style of this production is the least of my concern; it is the threat contained in the last sentence which I now wish you particularly to notice; and it is this which I think has warranted me in saying, that when Mr. Strong wrote his piece, which was after his first interview with Dr. Marshall, he did not suppose himself that he had been challenged.

Mr. Strong, after having swelled himself with the idea of his professional privileges, means to give Dr. Marshall to understand that he intends to institute a prosecution, on account of some publication. At this time nothing had been published on this subject which could give Mr. Strong offence, except the proceedings of the Court of Inquiry. This therefore is the publication which lawyer Strong threatens with judicial notice.

Now if Mr. Strong at this time had thought that Mr. Renshaw and Dr. Marshall had exposed themselves to a prosecution, by giving a challenge, do you believe this lawyer would have threatened them with a suit for a libel, when he might have held out to them the terms of a prosecution which might have sent them to the state prison for the best part of their days. No, gentlemen, Mr. Strong at the time he wrote this piece, never thought that he had been challenged, and it was a thought that did not come into his head till after the publication made by Mr. Renshaw, when disgusted and mortified with the picture which was there drawn of his own conduct, he determined to have revenge on those who had so exposed him, and now seeks it by these prosecutions.

I shall at present say no more of this piece, than to beg you to consider the whole of it, the time when it was written, and to say whether it does not manifestly appear from

it, that Mr. Strong, at the time he wrote it, meant it as that apology which Dr. Marshall had demanded of him, and that he had then no idea that Dr. Marshall had challenged him, or asked any thing more of him than an apology.

I shall say but little to you, gentlemen, as to what passed between Mr. Strong and Dr. Marshall at their second interview. We have not as to this the same reason to regret that we cannot have the benefit of Dr. Marshall's testimony, because Mr. Van Hook was present at the whole of this interview. He contradicts Mr. Strong as to all the essential parts of his testimony.

You will be told that it is your duty to endeavour to reconcile contradictory testimony; I admit it gentlemen, and I well know that the learned counsel concerned for the prosecution will lend you all the aid of their splendid abilities to assist you to reconcile the testimony of these two witnesses. But black and white are not more opposite than the testimony of Mr. Van Hook and Mr. Strong. It is impossible to reconcile them. Which then will you believe. Mr. Van Hook, who was called as a witness, whose attention was particularly directed to what passed in consequence of what had been said to him by Doctor Marshall before they went to Mr. Strong's, who was a calm, a disinterested spectator of the scene, whose character stands as high as that of any other young man, or Mr. Strong, who probably was agitated, who is a party, who appears even before you angry and revengeful, and of whose character I shall say nothing.

There is one part of Mr. Strong's testimony, and his manner of giving it, which I hope will not escape your notice. You will recollect that when he was first examined he said he was challenged by Doctor Marshall in their first interview, and that this challenge was direct and unequivocal;

that he was also challenged on the second day, but that this second challenge was not so explicit as the first, but was given by a reference to what had passed on the former occasion. Yet when, after the examination of Mr. Van Hook, Mr. Strong was again called, he seems to have recollected that the challenge on the second was given quite as unequivocal as it could possibly have been on the first day. On being pressed to say what were the words in which the challenge was conveyed, he said Doctor Marshall asked him to *meet* Mr. Renshaw. At another time, in answer to the same question, he said that Doctor Marshall asked him to *fight* Mr. Renshaw; and finally, when Mr. Strong had grown warm under the operation of a cross-examination, as if to make assurance doubly sure, he said "the short and long is, gentlemen, that Doctor Marshall did as well in the second as in the first interview, repeatedly ask me in so many words to meet and fight Mr. Renshaw." Now, this is not only contradicted by the testimony of Mr. Van Hook, but it seems to me that this last part of Mr. Strong's testimony cannot be reconciled with what he said on his first examination.

Doctor Marshall did not directly challenge me in the second interview, says Mr. Strong, it was only from his refering to what had passed at the first interview that I could gather from him what he said in the second that he meant to give me a challenge. Yet upon a second thought and upon a second examination, and not till then, Mr. Strong recollects that Doctor Marshall challenged him, at the second interview, in terms as direct and positive as any that could be used.

When I consider that there are such inconsistencies and contradiction as these in Mr. Strong's own relation, when I consider that his testimony is contradicted by the printed publications to which the counsel for the prosecution have

thought proper to appeal, even by that under Mr. Strong's own signature, and when in addition to all this I find that in the most important particulars Mr. Strong is directly contradicted by Mr. Van Hook, I cannot, gentlemen, prevail on myself to entertain any fears for the fate of my client. Still, however, I feel that I should not discharge my duty were I not to fulfil the promise I made at the opening of this cause to shew you that Mr. Strong's credit is impeached by the circumstances under which he has placed himself as a witness before you.

In performing this part of the task assigned me, I cannot forget that Mr. Strong is a member of the same profession with myself, and I must therefore feel a reluctance in entering upon it, which I should not do in every other case. But, gentlemen, men do not change their natures by becoming lawyers, and it is my duty to treat Mr. Strong as I would any other man under the same circumstances.

Though Doctor Marshall has been rejected as a witness in this case, on the ground of his having an interest in the event, yet it is manifest that Mr. Strong takes a much deeper interest in the conviction of the defendant than Dr. Marshall can possibly have in his acquittal. Have you not perceived in the course of Mr. Strong's examination how deeply he considers his character and reputation involved in the verdict you shall pronounce. He has not been able to conceal, even for the short time that he was before you as a witness, his animosity towards the defendant, nor that spirit of revenge which has stimulated him to institute these prosecutions, and which he impatiently expects will be gratified in the condemnation of my client. But Mr. Strong has even a pecuniary interest in this trial. How does it happen that this cause is not as all others have been during this session, left to the management of the official prosecutor? Why has it been thought necessary to enlist

against the defendant the splendid talents of the gentleman who now appears as the associate of the Attorney-General? Do you believe that this is a cause in which that gentleman would volunteer his services? Believe me, there is nothing in the conduct of the prosecutor, which accords with his feelings, or which can excite his sympathies. He would not exert his abilities in a case like this without extraordinary compensation; and who is to give it to him? Not the public, we know. The purse of Mr. Strong, gentlemen, has been opened. He has paid money to purchase the conviction of the defendant. Then let me ask——

The Court. Mr. Colden, these remarks are too foreign to the issue and the evidence.

Colden. I humbly presume, may it please the Court, that when a witness the most material we would have had, has been rejected on technical objections, it is proper to remark on the uncommon interest which the only witness for the prosecution has made it appear he has taken, by engaging at his own expence the first talents at the bar.

The Court. I think it not right to impute blame to the prosecution on that account. Perhaps it might be laudable to call in aid. It is not however necessary for the Court to pronounce an opinion on that point.

Colden. Then, gentlemen, I shall proceed to shew you that Mr. Strong has avowed sentiments inconsistent with candour and truth, and has thus impeached his own credit. This obliges me to direct your attention once more to his famous apology. It is not necessary that I should read to you the protest of Captain Petty, or Mr. Strong's remarks upon it, which were published under the signature of 'A Citizen.' They excited so much the interest and feeling of the public, that no doubt you have read them. They have probably been printed in every newspaper on the continent, and perhaps there is not a man in the United States

who can read, on whose mind they have not made a deep impression. You must well recollect, gentlemen, what indignation they excited; that they accused Mr. Renshaw of the most wanton abuse of the power which the government put in his hands; that they charged him with having exercised the most cruel tyranny, and with having in the most unfeeling and inhuman manner ill-treated a peaceable unoffending fellow-citizen. Who, believing these charges, could say he had a personal respect for Mr. Renshaw? or what will you think of the veracity of that man, who while he entertained a conviction that Mr. Renshaw was guilty, should, through base fear, or from any other motive, be induced to give a certificate under his own hand, that he respected Mr. Renshaw?

Yet look at this publication of Mr. Strong's. He avows his belief of the charges, and at the same moment says that he has not the least personal disrespect for Mr. Renshaw. Or if, on the other hand, Mr. Strong, when he published the protest and his remarks, did really respect Mr. Renshaw, then he could not have believed the charges in the protest; and what wickedness, what baseness was there in that case in making the publication of the piece signed 'A Citizen'?

I read, gentlemen, with infinite indignation, that abominable confession of Mr. Strong's, contained in this same piece, "that he made these charges against Mr. Renshaw from political motives, and in order to bring the government into disrepute." Is it possible that a man can have the audacity to avow such a want of principle? To avow that he made a charge against a young officer, calculated to ruin him in his profession, to disgrace him with his companions, and to render him odious to his countrymen, with the sole design of traducing the administration! We want no witnesses after this, gentlemen, to the character of Mr. Strong.

This is as conclusive against him as the evidence of thousands could be. It is a certificate under his own hand that he is undeserving of credit.

I am desirous, gentlemen, that you should regard the conduct and testimony of Mr. Strong with all the charity possible. There is an irreconcilable contradiction between him and Mr. Van Hook; and I know that you must believe the latter. But yet I will admit, as Dr. Marshall does, that Mr. Strong may be an honourable man, and I account for his strange and irreconcilable conduct and testimony, by supposing that he was, when he wrote the remarks which he published under the signature of 'A Citizen,' and has been ever since, and was particularly at the time he met Dr. Marshall, under some mental derangement. Could any lawyer, or even any layman, in his senses, have composed such a piece as this apology of his? the whole of which I have read to you, and made some observations on its absurdities, for the sake of making this remark. It seems to me to bear strong evidence of its having been written by a man who had not the right use of his senses. We know, gentlemen, that fear sometimes strangely disorders the human intellect. There is no fact better authenticated I believe, than that, during our revolutionary war, a British regiment to the southward, which was in a situation momentarily to expect an attack, mistook in the night a field of Indian corn for its enemy, and did not discover the mistake till they had exhausted a considerable portion of their ammunition on the corn-stalks, which appeared in their fright to be the moving bayonets of their enemies. Possibly fear had a like effect on the nerves of Mr. Strong; he knew the character of Mr. Renshaw; his fame had reached across the Atlantic; he knew he was one of those heroes who, with Decatur, had won immortal glory before the walls of Tripoli. He knew what would be the consequence of in-

juring such a man, and from the moment he received the first note from Mr. Renshaw, his imagination was disturbed with thoughts of blood and deadly contests: for he had dreamed of "moving accidents and hair-breadth 'scapes." The moment Dr. Marshall stood before him, all his senses took the alarm; he smelt gunpowder in the very breath of the Doctor, and heard the report of a pistol in every word. According to his own story, among the first things he said to Dr. Marshall, was, "I won't fight—if you are for fighting, I am not your man—you need not challenge me, I am no fighter."—This shews what was the perturbed state of the gentleman's nerves at this time, and we ought to have the charity to suppose that Mr. Strong's apprehensions made so strong an impression on his mind, that what he expected and dreaded would happen, he has thought actually occurred; and under these false impressions, heightened by disgrace, mortification, and revenge, he comes here, and relates to you as facts, things which never had existence but in his own disordered fancy.

I am convinced that the counsel opposed to us, will not rely much on the testimony of Mr. Strong. It is so irreconcilable and inconsistent, as even to defy their ingenuity. Their great effect will be to support the charge by the printed documents. But I do not believe that you can be prevailed upon to put a construction on them so different from their natural import, and so entirely foreign to the intent with which they were written. The statute on which these indictments are founded, is a salutary law, and ought, on all occasions where it applies, to be enforced. Were I a juror, I never would overlook an infringement of it. But in our zeal to punish offenders against this law, do not let us confound the innocent with the guilty. In this, as in every other criminal case, you must acquit, unless there is full proof of the defendant's guilt. Where there are doubts,

your verdict must ever be, as I trust it will be in this instance, *Not Guilty.*

MR. HOFFMAN.—*Gentlemen of the Jury,*

The young gentleman before you, is arraigned on a charge of the most momentous nature, and deeply interesting to his future fortunes. Notwithstanding, then, that I entered at a late hour upon this cause,* and notwithstanding you have already been most ably addressed in his behalf, still, I feel bound to contribute my earnest endeavours, to rescue him from unmerited punishment.

As I was not present during the first part of Mr. Strong's examination, it cannot be expected that I should scan his testimony very minutely, or analize it with verbal exactness. I can only gather its tenor and substance from my associate counsel, and from the answers of Mr. Strong to the few questions I asked him on his last examination. This must serve as my apology, for being less particular than, perhaps, I should otherwise have been; and must be my excuse, if I should happen to mistate his testimony; in which case, I shall be happy to be corrected. My desire is to present a fair and undiscoloured statement of facts, and to trust to that alone for the honourable acquittal of my client.

Let me not be thought on this, or on any occasion, the advocate of the duellist. Let me not be considered the vindicator of a practice, which in my judgment I condemn—in my heart I abhor: a practice, which has repeatedly outraged society, and, in one melancholy instance, has thrown the gloom of sorrow and mourning over our city, and wrung the heart of every friend to his country. No, gentlemen, I consider it a flagrant vice, that

* Mr. Hoffman was prevented, by other engagements, from appearing in Court until after the defence was opened.

should be publicly discountenanced, and, as far as human laws can prevail, totally abolished. But let not our abhorrence of the crime, nor our eagerness to correct, betray us into an error of misapplied severity: let the arm of justice be properly directed, lest the innocent be sacrificed as an example to the guilty.

Until I entered these walls, I never had any personal knowledge of the defendant; he was a total stranger to me; and last evening, for the first time, I was professionally applied to in his behalf. If my mind was, in any ways, biassed or prejudiced concerning him, believe me, it was not in his favour. I had read the newspaper attack on him, which has proved the ground-work of this prosecution. I had regarded the defendant as an arrogant young officer, who, finding himself "dressed in a little brief authority," considered it merely as a title to be insolent with impunity—who had abused the power confided to him for important purposes, by insulting his fellow-citizens; and had regarded his commission, not as a bond, which bound him to the service and defence of his country, but as an instrument of privilege, that placed him above her laws. Such was my opinion of the conduct of lieutenant Renshaw, formed on the publications of Mr. Strong; that I did him injustice, I am now fully convinced; from the evidence before us, I find him, not merely exonerated from censure, but entitled to approbation. I feel myself bound, therefore, to make him this public avowal, and strenuously to yield him the aid he seeks in the exertion of my professional services.

Allow me, before I discuss the immediate object of your inquiry, to detain you by a brief statement of the origin and history of this prosecution. Justice to my client requires that I should pursue this course; nor is it unimportant, as it concerns the duty you are about to discharge.

It will present a contrast between the motives and conduct of the accused and the prosecutor, honourable to the one, but deeply humiliating to the other. And in a cause where testimony is to be weighed and sounded with suspicious caution; where contradictions between different witnesses, impossible to be reconciled, are to be compared, and truth to be discriminated from falsehood, and artful perplexities; it becomes essentially important to enquire into the characters, the motives, and the passions of the parties; and, above all, to look with a scrutinizing and distrustful eye on him, whose conduct shall be most stigmatized with impropriety, or whose proceedings, even in this sanctuary of justice, shall appear actuated by a virulent and persecuting temper.

Some months since, Mr. Renshaw was accused, in one of our most respectable public prints, of abuses in the discharge of his official duties, which, if true, would have disgraced him as a gentleman, dishonoured him as an officer, and degraded him as a man; which would have struck at the very root of his hopes and fortunes, by proving him unworthy of remaining in the service of his country. The resentment of the public was excited against him—that public whose soldier he was, and on whose good opinion alone depends the fame, for which the soldier struggles. Commodore Rogers, with a laudable anxiety, not confined I trust to officers of his high station, felt for the honour of the profession, thus assailed through one of its members. A board of inquiry was instituted—the conduct of Mr. Renshaw was rigorously examined, and he was honourably acquitted. What next was to be done? He had fully cleared himself in the opinion of his superiors; he was restored to the fellowship and friendship of his brother-officers; but there was yet one cause of anxiety preying upon his feelings—the charges against

him had been reiterated and commented upon in the public prints—their falsehood should be made equally notorious.

He calls on the printer to retract what he had published —the latter, with a just sense of his duty, refers him to Mr. Strong as the author. He is written to, but he gives no answer. Mr. Renshaw then engages his friend, Dr. Marshall, to call on Mr. Strong for that honourable satisfaction which a gentleman, so deeply injured, had a right to expect, and no gentleman, so unjustly injuring, ought for a moment to have withheld. I repeat the words deliberately —he *demanded an honourable satisfaction.*

—But trust me, gentlemen, by these terms I imply a very different satisfaction from that of a duel. It is not by a rash recourse to violence, that the wounded feelings of a man of principle are appeased. It is not to be supposed, when a gentleman asks of you an honourable reparation, that he solicits you to level a pistol at his bosom ; and none but a man whose ideas of honour are extremely vague and incorrect, could ever have been guilty of such a mistake. As Doctor Marshall justly observed to Mr. Strong, "a man of honour shews himself to more advantage by retracting a false accusation, than by persisting in its defence." Would that Mr. Strong could have been persuaded of this truth, but his heart seemed callous to so generous an impulse. No, gentlemen, he resorts to contemptible and cowardly evasion. He offers some preposterous excuse about his client, Mr. Petty, for whom he had brought suits against Mr. Renshaw, grounded on the very circumstances which remotely gave rise to this prosecution. He cannot think of an apology, for fear it should prejudice the interests of Mr. Petty in his pending actions !—Truly this is a most satisfactory explanation !—What then ?—His tender feelings towards the pocket of his client, were stronger than his sense of justice; or rather, he cannot think of making Mr. Ren-

shaw the atonement to which he is unquestionably entitled, and which his insulted pride and wounded character impatiently demand, lest it should protect him from suffering unjust and exorbitant damages in the actions of Mr. Petty! in plain terms, he would not render him a necessary act of justice, lest it should prevent him from suffering a wrong! Was cowardice ever more perplexed todevise an excuse? Surely, gentlemen, you cannot hear of such a singular perversion of reasoning, and such an outrage upon the principles of honour, without a mingled feeling of contempt and indignation. What would have been the correct and dignified conduct which he ought to have adopted?

Mr. Petty had misled him by an erroneous statement, to which Mr. Strong had given his belief, and which certainly placed Mr. Renshaw's conduct in a most opprobrious light. Mr. Strong, feeling justly indignant at this apparent abuse of power, prefers a charge against Mr. Renshaw in the public papers. So far there was nothing censurable in his proceedings; they carried with them the appearance at least of just and commendable motives. But when he was convinced of the falsity of the grounds on which he had proceeded; when he read in the acquittal of the Court of Inquiry an honourable vindication of Mr. Renshaw; when he found he had been betrayed into an unprovoked attack upon a deserving young officer, whose reputation was the means of his subsistence, the foundation of his fortunes, and the end of his ambition; surely no candid atonement would have been thought too great for so deep and unmerited an injury: such at least would have been the sentiment of every generous mind, and such indeed would have been the best criterion of true courage.

We have thus given, gentlemen, a slight sketch of the

circumstances under which this prosecution is commenced. If they are correct, and of this you will be enabled to judge, my client stands before you in no common situation. His character has in the first instance been unjustly assailed. With the manly promptness of a soldier he courts investigation, and rescues his conduct from professional obloquy. But on demanding public atonement at the hands of his accuser, he is charged with again offending the laws of his country—with sending a challenge and seeking a duel.—Thus either the fears or the malice of his prosecutor, magnify his words, and make it a crime for Mr. Renshaw to seek reparation for injuries, which Mr. Strong himself had inflicted upon him. Should this prosecution succeed, and conviction ensue, all his prospects of future honour and distinction are forever blasted—you close the world upon him when he is just entering on its threshold—you inflict a fatal blow, that cripples him forever.

Gentlemen, this trial has made you acquainted with the defendant and his prosecutor. You have marked the bitterness, irritability and want of candour of the one—you have seen the other conducting himself with calmness and moderation. Where passion and prejudice evidently mingle with accusation, the source of truth becomes polluted, and confidence must entirely be withdrawn. In such a case you will exact not only *positive*, but *credi- ble* proof—the oath of such an accuser and witness can never satisfy your judgment—doubts will remain, and while there are doubts, you must, you will acquit.

We are now prepared, gentlemen, to enter upon an examination of the testimony—a task ever painful in causes circumstanced like the present. But before I commence, suffer me to disclaim all personal hostility towards Mr. Strong. I have no angry passion to gratify by the event of this trial, and whatever may be my opinion of the conduct

of Mr. Strong, his defeat will not yield me any triumph. Sorry am I for his sake, that this prosecution was ever commenced, and willingly would I spare him the shame and mortification which he has wilfully brought upon himself. Whatever remarks, therefore, this trial has extorted, or may extort from me, let them, I entreat you, be attributed solely to a faithful and conscientious discharge of my duty towards my client.

A verbal challenge is testified to have been delivered both on the 28th and 29th of October, and I shall endeavour to meet the testimony in the order it was given.

First, as to the 28th October—

The counsel was here proceeding to remark, that Mr. Strong had stated, that the challenge, delivered at that time, was conditional; when it was observed, as well by the opposite counsel as the court, that Mr. Strong had not said that the challenge on that day was conditional, but peremptory.

Hoffman. I thank the gentleman for the correction, most candidly and sincerely. It will fortify my argument.

I admit then, that Mr. Strong expressly swore that in the first interview, at which Mr. Van Hook was not present, Dr. Marshall delivered an absolute and positive challenge, inviting him in explicit and unequivocal terms to fight a duel. But remember also, that at the same interview, according to the testimony of Mr. Strong himself, Dr. Marshall agreed to call the next day. For what?—Why, to know whether Mr. Strong was the author of the offensive publication! For it seems that Mr. Strong had not as yet avowed himself such, but desired to examine the paper before he admitted or denied the fact. Now there are circumstances incident and peculiar to almost every transaction, which have, and which ought to have, more influence with persons of discriminating judgment, accustomed to sift

and weigh evidence, than the fallible statement of witnesses.

The memories of men of the strictest veracity are liable to be treacherous; and the most scrupulous witness, either through fright, through misapprehension, or some momentary agitation, may have misconceived language, and substituted the offspring of his own fears and conjectures, for the actual declarations of others. Facts speak for themselves, and in a language not to be perverted. The testimony given by Mr. Strong, respecting the first interview, is totally contradicted by the intrinsic evidence arising out of the nature of the case; or rather, one part of his testimony necessarily supersedes and refutes the other.

If a challenge had actually passed, why was Dr. Marshall to call the next day, to be informed whether Mr. Strong was, or was not, the author of the paragraph?

The act of passing the challenge would naturally imply that the fact was perfectly ascertained and fully avowed. Is it customary to challenge a man first, and afterwards inquire whether he committed the alledged injury? Do men of honour commonly proceed in such a precipitate manner? The most usual and consistent mode, as I have understood, in cases like the present, would be first to demand of the supposed offender, whether he had committed the wrong; if so, to request an apology, and if that was refused, then to demand personal satisfaction, or resort to public exposure. That such has been in this instance the mode of proceeding, is obvious and certain. For if Mr. Strong, after the proposed examination of the paper, should deny that he was the author of the publication, then there could exist no cause for challenging him: and even if he admitted he was the author, and chose to make an adequate apology, as a gentleman of true courage and correct principles would have done, then there could have been no pretence for a chal-

lenge, and the affair would have terminated to the credit of both parties. Surely Dr. Marshall, who is represented by those who know him, as a discreet, temperate and judicious man, cannot be so strangely ignorant as to bungle in the manner Mr. Strong's testimony represents—to commence at the wrong end—first to deliver a challenge, and then tell Mr. Strong he would call the next day to ascertain from himself if he was the author of the provocation. Preposterous! Gentlemen, you cannot credit it—consider all the circumstances attentively, and it is impossible, according to rational deduction, that an absolute challenge could have taken place on the 28th of October. Mr. Strong, it is true, deposes that it did, but this is one of the many instances, where we must make great allowances for the perturbed state of that unhappy gentleman's mind, which is so much agitated by angry passions as to obscure even his powers of recollection.

Unfortunately for Mr. Strong, his testimony is not only at variance with the reason and inherent nature of the transaction, but it is in direct opposition to his own declarations, made to Mr. Van Hook within a few hours after the interview; and here I take occasion, once for all, to remark on the relative weight of character of these two witnesses.

The character of Mr. Van Hook has passed scrutiny before you, and remains fair, unimpeached, unquestionable—that of Mr. Strong has been supported by two gentlemen of the profession, for whom we indeed entertain sentiments of respect; but it appears equivocal, from the testimony of others. Are there then only two gentlemen to be found in this crowded room, who will testify in favour of Mr. Strong?—this looks indeed suspicious? Certain I am, that if either of the counsel conducting this cause were so impeached, the whole bar would rise up spontaneously in their vindication. Yes, gentlemen, you would not have seen

persons called and named as witnesses, retiring from view, or withdrawing out of court.

The Court. Confine yourself, Mr. Hoffman, to the evidence given—it is not evidence that you now state.

Mr. Strong. Since my character is thus traduced, I must make a request to the court—I can name eight or ten gentlemen in court ready to testify as to my character.

Hoffman. I appear before you, gentlemen, as the advocate of a man wrongfully accused, and my utmost exertions are enlisted in his defence. I will, however, say nothing designedly, that I am not warranted in saying, nor will I wantonly mistate or discolour the minutest circumstance; but neither will I, on the other hand, abstain from the thorough discharge of my duty to my client, because I am interrupted or charged with traduction. They mistake me, who suppose that any thing of the kind shall deter me from proceeding in the cause I have marked out, and from contrasting, as the law and the evidence entitles me to do, the characters of Mr. Strong and Mr. Van Hook.

The Court stopped Mr. Hoffman, and hoped that observation was not applied to the interruption of the Court. The counsel instantly replied, "*certainly not;*" he alluded on ly to Mr. Strong, and he was sure he was so understood by the jury—some of them replied in the affirmative. The Court directed him to proceed. He then thanked the jury, for believing him incapable of speaking a disrespectful word of the Court, and proceeded:

Gentlemen of the jury, we will return to the evidence before us. When, to the palpable absurdity in Mr. Strong's account of the interview of the 28th, you add the testimony of Mr. Van Hook, which must be credited, and that likewise of Commodore Rogers, you can no longer harbour a doubt on the subject.

On the afternoon of the 28th, after the interview had taken place, Mr. Van Hook meets Mr. Strong, and after some conversation, inquires, whether Mr. Renshaw had challenged him; to which Mr. Strong replies, "not quite." This, however, Mr. Strong totally denies; and here is one of the many contradictions in the testimony of these witnesses. On a point so highly important to the fate of this cause, you are to be governed by the respective credibility of the witnesses—which of them are you most inclined to believe? I can answer for you—Mr. Van Hook.

The whole course of the transaction entitles him to credit; and his evidence only comes in support of what your own reason must have already deduced, from the obvious nature of things. Besides, the object of Dr. Marshall's visit and the instructions he received from his superior officer, not to challenge, both establish the probability of Mr. Strong's declaration to Mr. Van Hook, and the veracity of the testimony delivered by the latter.

Unhappy dilemma of Mr. Strong!—thus, by his own irreconcilable contradictions, rendered the strongest witness against his own credibility. To which of his assertions are we to yield our belief, since they are so opposite to each other? Our only method is, if I may be allowed the expression, to confront Mr. Strong with himself, examine what was his state of mind and his situation at the time when he first spoke of this interview with Dr. Marshall, and what it is at present, and then decide at which time he is most entitled to credit. In the first instance he speaks of the interview to Mr. Van Hook a few hours after it had taken place—while it was yet fresh in his recollection—when every circumstance and feature of it were distinctly understood and remembered. As yet he had no motives for concealing or misrepresenting facts; his conduct had not been publicly exposed; the mortifying publication of Mr. Ren-

shaw had not yet appeared to humble his pride and excite his resentment. He therefore spoke candidly and plainly, and declared that no challenge had passed.

Such was the situation of Mr. Strong at the time of his first declaration; how is it at present, when he gives totally opposite testimony?—he has been publicly exposed and posted by Mr. Renshaw—he has been made the subject of sneer and reproach—he is inflamed to a degree of violent animosity; and he has instituted this prosecution, in hopes by its success to retrieve some part of his lost character. Under these circumstances, let your judgments decide, gentlemen, at which time he is most entitled to your confidence.

We now proceed to the interview of the 29th; and here I shall pursue the same course, by resorting to circumstances and proofs, which corroborate the testimony of Mr. Van Hook.

That there might be no possibility of mistake or misapprehension on my part, I enquired of Mr. Strong, at the close of the testimony, what were the words used by Dr. Marshall; "to which he replied, "You must fight Mr. Renshaw:" he afterwards qualified them—"you must meet to fight him." Adopt which of these statements you please; the difference is immaterial to my argument.

Mr. Van Hook is then confronted with Mr. Strong—he replies promptly and decidedly, "No such language, nor any expressions of the like intent, ever passed." Here then the witnesses, though diametrically opposite, are equally positive in their assertions.

On which are we to rely? I would fain believe that one or the other has made an involuntary mistake—that he has misunderstood the words of Dr. Marshall, or that he is unhappily afflicted with a confused and fallacious memory. But I am afraid, gentlemen, we cannot indulge in so cha-

ritable a construction—I am afraid one or other has been tampering with the truth, and sadly mistating facts. Since then their testimony is irreconcilable, it only remains once more to scrutinize, which of them presents the clearest claims to confidence. On your disbelief of Mr. Strong's testimony depends the acquittal of my client; to disprove it therefore must be my duty; and however unpleasant the task, and however ungracious it may prove to the feelings of the witness—from that duty I cannot shrink.

Is Mr. Van Hook's account of the last interview satisfactorily confirmed? To answer this inquiry, we must examine into previous circumstances; and one of the strongest supports that could be yielded to his statement, is the testimony of Commodore Rogers—his testimony most clearly unfolds the views and intentions of the parties, in seeking the interview. Commodore Rogers, it has already been mentioned, was previously consulted by Mr. Renshaw; and he gave such counsel as was to be expected from a gentleman of his prudence and discretion. He evinced a becoming interest for the conduct and reputation of those under his command—he sympathized with Mr. Renshaw; and knew what must be the feelings of a spirited young officer, whose name had been publicly and rudely insulted—but, above all, he felt jealous for the honour of the navy, and feared, that situated as Mr. Renshaw was, the stigma levelled at his conduct would be extended to the whole service. He was anxious, therefore, that he should be fairly exonerated—that he should seek *public and honourable satisfaction*—but what was the nature of that satisfaction?—not a duel, gentlemen—he could not suppose that Mr. Renshaw, charged with having violated the rights of his fellow-citizens was to wipe off the reproach by transgressing the laws of his country!—No, gentlemen, his advice was directly the reverse. Both before the first and second inter-

view, he expressly enjoins Dr. Marshall to demand merely an apology; and should Mr. Strong be so ungenerous as to refuse, then his conduct was to be fully exposed before the public, Mr. Renshaw completely justified, and the disgrace of the transaction, and the necessity of a challenge, if any such there was, transferred to his opponent. Nay, so very circumspect and careful is he on this point, that he expressly cautions Dr. Marshall not to give a challenge; and by his particular desire, Mr. Van Hook accompanies Dr. Marshall, for the double purpose of preventing a challenge, and of being a witness to the transaction. By this it would seem Commodore Rogers had a distrustful eye upon Mr. Strong—he was convinced it would be dangerous to be in his power—he had, in fact, a presentiment of some foul play—and how far his suspicions were well grounded, this trial has manifested.

Such then was the advice and instructions of Commodore Rogers to Mr. Renshaw and Dr. Marshall. Can there be a doubt that his opinion was punctually obeyed? It is not probable that the parties consulted him, unless with the intention of being governed by his judgment—it is not likely that they would shew so little respect to their superior officer, as to ask his counsel, promise to be governed by it, and afterwards treat it with contemptuous neglect.

Gentlemen, we cannot credit such a supposition; it would have been presumptuous in these young men—it would have been insulting to Commodore Rogers. And yet so must Dr. Marshall have acted, if you credit the contradictory tale of Mr. Strong, in preference to the more reasonable and consistent relation of Mr. Van Hook.

Such, gentlemen, is the weight and force of Commodore Rogers' testimony; and he is a witness, whose every word must press upon your belief, for he is not [illegible] ricate or evade—he clearly manifests [illegible]

Renshaw, and the object of his friends. His evidence leads directly to the evidence of Mr. Van Hook,—they follow as naturally as cause and effect, and by their perfect harmony, they corroborate each other.

But is there no other fact to support the testimony of Mr. Van Hook? Yes, gentlemen, it receives additional support from the very circumstance of his accompanying Dr. Marshall. It is known to you that, according to our laws, if a man falls in a duel, the surviving parties are guilty of the crime of murder, and that the second is considered equally culpable with the principal. Can it be supposed then, that a man of common prudence, when about engaging in an affair of this kind, would bring witnesses of the fact, so as to furnish the means of his own conviction? Surely this is very different from the cautious and secret manner in which duels are usually conducted. The mere act of challenging too, as this prosecution shews, is criminal and severely to be punished. Can we believe then, that Dr. Marshall was so very incautious as to require the company of Mr. Van Hook, thereby furnishing Mr. Strong with a witness, in case he should resort to prosecution? If the Doctor was the bearer of a challenge, of what use was Mr. Van Hook? It certainly did not require two persons to deliver a message of this kind. No, gentlemen, the circumstance plainly indicates, that no challenge was intended—that Mr. Van Hook accompanied Dr. Marshall, as a witness to notice what passed, and as a safeguard against the anticipated misconstructions of Mr. Strong.

But there is still another undisputed fact, to confirm the correctness of Mr. Van Hook's testimony;—the interview, we are told, lasted upwards of an hour—to what end? a few minutes would have answered all the purposes of challenging. What then were the communications, that occupied such a length of time? Mr. Van Hook satisfactorily

informs us—having requested honourable reparation or satisfaction, I am indifferent about the terms used, Dr. Marshall, with the candid and liberal spirit of a gentleman, who was tender of the feelings of all parties, reasons with Mr. Strong on the subject, and endeavours to persuade him, that an apology was always the honourable atonement for an unintentional wrong; and that to retract an injurious assertion, when founded in error, would never be regarded as disgraceful—that this was the tenor of Dr. Marshall's long conversation, is evident from the deportment of Mr. Strong himself; for on parting, he expresses himself highly satisfied with Dr. Marshall, and acknowledged, that he had conducted himself in the most correct, proper, and friendly manner.

But now, even to Dr. Marshall, his language is changed. What but passion or ungovernable resentment could have made him so far forget himself, as that in this court, before you gentlemen, he should with vehemence retract his former declarations, and, to make use of his own decorous language, call Dr. Marshall "a snake in the grass?" Dr. Marshall had not here offended him, for the rules of law excluded his testimony, and he had no opportunity to vindicate his own character and conduct. Mr. Strong should have spared this intemperate, this unprovoked attack, lest Dr. Marshall should hereafter retort, "you are the insidious adder, whose tooth would canker and whose breath would poison—you are the grovelling serpent who, sheltered beneath the forms of law, and under cover of a legal prosecution, would craftily effect the destruction of your victim."

Since, then, we have found the testimony of Mr. Strong to be fallacious, let us for a moment examine into his motives for misrepresentation; for though, in truth, he appears to but little advantage in this trial, still I would do

him the kindness to believe he has sinned through the irresistible impulse of passion, rather than any inherent wickedness of heart. Yes, gentlemen, his motives are to be found in the weakness of human nature. He feels disgrace inflicted upon him by the publication of Mr. Renshaw—he is wounded and humbled by public reproach. An unmerited injury may be passed over with contempt—the anger it excites is oft but transient, and conscious innocence disarms it of its sting—but an act of deserved and public punishment is never to be forgiven. Having once wronged Mr. Renshaw, and this wrong having redounded to his own humiliation, he ever after looks upon him with enmity; for you are not yet to learn, that there are some men who hate where they have injured, and would ruin where they hate. Let, then, the state of Mr. Strong's mind be carefully taken into consideration. If you find him stung by deserved mortification. If you find him instigated by revenge, that most blind and ungovernable of human passions, he comes before you with his judgment warped, his feelings perverted—he is a prejudiced witness—beware how you confide in his testimony!

Does Mr. Van Hook appear in the same situation? Can any satisfactory reason be shewn, why he should depart from the truth? Does his character, the nature of his testimony, or the tenor of his conduct, leave any room to charge him with an improper bias? Has he any unruly or unworthy passions to gratify in giving to you a false statement? Quite the reverse—he was acquainted with the situation of those gentlemen—he felt interested in their behalf, not as an officious intermeddler, but as a real friend, to prevent a violation of law, and to be a check on any possible incaution of Dr. Marshall. With such motives his interference was highly meritorious, and it was equally successful; for he

tells you upon his oath, that nothing like a challenge passed between the parties.

It may be contended, that the letter of the 28th October, delivered by Mr. Renshaw, was a challenge. On this point, it is only necessary to add a few words. I will not deny that indirect terms will frequently imply a challenge —there are no set words or established forms for the purpose, neither would any equivocation or disguise in language, cover or conceal the intended meaning. The true principle in construing written messages of this nature, and indeed it is a principle that governs in all criminal charges, is, that the intent alone constitutes the guilt. Test the letter then by this principle and can a doubt remain in your minds? Have you not ample evidence to prove the intention of the letter? First, the weighty and conclusive testimony already cited, of Commodore Rogers, who perused the letter, and declared that it did not amount to, nor was intended as a challenge. Next, Mr. Strong himself did not consider or receive it as a challenge; for after it was delivered, he declares to Mr. Van Hook that he had not been challenged; neither in his own written explanation, as delivered to Mr. Renshaw, is there the least mention made of this letter of the 28th of October, as a challenge. Every line of this paper, prepared and formed by Mr. Strong himself, plainly shews that he considered a negociation as still depending, and that war was not actually declared.

In closing my remarks to you, allow me to bestow a few observations upon Mr. Strong's reasons for his original attack upon Mr. Renshaw. They are gravely and formally stated by himself in the very singular production which has been read to you.

It did not proceed, he says, from any personal disrespect to Lieutenant Renshaw, then and now an entire stranger, but only *politically* intended, as reprobating certain-

measures of government. Gentlemen, my political sentiments are no secret, for they have ever been publicly avowed. I am far from being an advocate for the present administration; on the contrary, I would heartily co-operate with any open, manly and steadfast opposition to its prominent measures. But I despise the man who would murder private reputations—who would blast the fame and fortunes of unoffending individuals, for the purpose of rendering the government unpopular. Shame, shame on such iniquitous policy! I consider such a man as unworthy of being ranked in the party to which I esteem it an honour to belong. No, gentlemen, such is not our creed; we carry on no war of individual distress; we countenance no assassination of character; it is the good of our country, not the ruin of our political opponents, we seek; and if ever, in the course of our honourable opposition, any slander like the present should appear, believe me, it is not the voice of the party, but the personal invective of some would-be champion.

And now, Gentlemen, I cheerfully consign my client to your protection, and to that verdict which you are about to pronounce. For his fate I have but little apprehension, as I am satisfied you cannot convict him until you have brought yourselves to believe that Mr. Strong is a cool, unprejudiced witness, and that Mr. Van Hook has wantonly testified to falsehoods.

As Mr. Hoffman closed, the opposite counsel stated to him, that they should urge the conviction of Mr. Renshaw on the indictment, which charged him with not being a citizen of this state.

Mr. Hoffman. I am told, gentlemen, and it is candid in the opposite counsel to mention it, while I have still an opportunity to oppose, that they intend to urge a conviction, on the indictment charging the defendant with not be-

ing a citizen of this state. The punishment on this indictment, in case of conviction, is confinement in the state prison for a period not exceeding seven years—though I do not feel any apprehension that you can bring him in guilty upon either indictment, yet, as I cannot be positive in what light you may regard the subject, I will briefly add a few words. He is a citizen of New-York, because this state is his present domicil. It is true he was born in Pennsylvania, then he is a citizen of the United States, and within the meaning and intent of the dwelling act, a citizen of that state where, at the time of the offence charged, he had his domicil or residence. I was born in the state of New-Jersey, yet am I not to be esteemed a citizen of this state, wherein I reside, and where I follow my profession and gain my livelihood? But I will not detain you, gentlemen, by argument on this point. It is a question of law and I readily and cheerfully submit it to the charge of the court. I could hardly, however, have imagined that the resentment of the prosecutor would have carried him so far as to seek to cast the defendant into an ignominious prison, and overwhelm him with personal suffering and irretrievable ruin.

Emmet. The same causes which prevented the reporter from hearing the commencement of Mr. Colden's opening, operated to his disadvantage in the beginning of Mr. Emmet's summing up. His first observations were, however, to this effect, That he was sorry, after all the time which had been consumed at this trial, and at so late an hour, to be obliged to detain the Court and Jury still longer. He thanked the defendant's counsel for the flattering things they had been pleased to say of him, but he must repel any application of those compliments to the disadvantage of his client. I admit, he continued, that I do stand here as the

assistant of the District Attorney, but I deny any conclusion to be drawn from that to the prejudice of the prosecutor.

In the country from which our criminal law is derived, there is no official advocate for the prosecution except one attorney-general, who seldom interferes in matters of minor moment; yet it has never been imagined that because a prosecutor chuses to procure professional assistance, there is to be suspicion cast upon the cause: on the contrary, in a case like this, when it was avowed that the defence would rest upon the impeachment of the prosecutor's credit on his oath, nothing could be more natural than that he should employ counsel to assist him. For my part I should have a bad opinion of him indeed if he was insensible to the imputations cast upon him, and to the evident intention of disgracing him in the public estimation. He must be something better or worse than human, if he had not thought it advisable to call forth aid in a prosecution the defence of which was to be an attack upon his character. But though I come to give him my professional exertions, I am not hired to asperse any other man. The gentlemen say, you must have heard of the breach between the citizens and the officers of the navy: for my part I know it only by report, and if it exists, be assured I never will do any thing to widen it. I will moreover be always slow to yield belief to any accusation against those who are engaged in the honourable service of their country: yet I will not hesitate, when called upon, to enforce the penalties of the law against the violators of the law. Thus far I have thought fit to explain my sentiments of this cause, lest there should be any misconception from the warmth of a man, frequently ardent in his client's behalf; but I have seen in the conduct of this defence enough to warrant me if I were warmer still than are my ordinary habits. I have seen enough to tempt me to launch out against those whose conduct seems to me to ad-

mit of no other explanation than that they have been actuated merely by personal dislike; and I do feel some indignation on this as on every other occasion, where I see a settled disposition needlessly to run down an individual and to destroy his character.

But let us see how the testimony stands, and whether there is any necessity for these violent attacks. Mr. Renshaw is a military man, and if he has any prejudices they are probably of a military cast. Doubtless he feels his honour his best possession, and therefore guards it with, perhaps, an over-scrupulous attention. He is young, and will it be thought improbable that a young officer in the navy, deeming himself injured, should send a challenge? Or should the statement on oath of such a fact be made the ground to attack the credit and character of a witness?— Mark further the course of the transaction. He sends a letter inclosing the proceedings of the Court of Inquiry. He sends another and another letter, not merely alluding to an apology, as is pretended on the other side, but which has this emphatic sentence, "To this gentleman (Dr Marshall) I have *fully* committed my sentiments in regard to the existing subject of controversy." Why this word *fully* in italics, if he wanted simply an apology? Why underscore the word fully if something more emphatical was not intended than the words in ordinary acceptation would convey? "And I have given him," he adds "ample authority to act in such manner as he thinks most conducive to my honour and feelings." If he only wanted an answer to the letter which had been disregarded, would he have expressed himself in such terms? Or what need would there have been of such ample authority to act, "as most conducive to his feelings and his honour?" Even if all he wanted was an apology, he would not have made Dr. Marshall the judge of its sufficiency. He would have said, bring me back his

answer and I will judge of it for myself. Where is it that a man commits his honour, his feelings, and his reputation, to his friend? It is where that friend is empowered to give a challenge, and there remains only one point to adjust.— What was that which was to conduce to his honour and feelings, and in which Dr. Marshall was to act, if he had no other commission than to be the bearer of his letter?— What does an officer mean when he gives his full authority —these plenary powers to another to act in every thing as he thinks most conducive to his honour and feelings? You cannot shut your eyes to the meaning of this letter. Commodore Rogers, indeed, says he read it before it was sent, and did not understand it as giving a challenge. I have not the honour of knowing Commodore Rogers, but if he received from any gentleman with whom he had a difference, a similar message, I stake my life that he would understand it. A military man acting for another, and that other young, and under his command, and perhaps under his protection, may be so far blinded by affection and anxiety for his honour, as not very accurately or even rigourously to see whether he does not err on the side of promptness and courage; but if that letter was addressed to Commodore Rogers himself, by any person of Lieut. Renshaw's profession, and delivered by a friend, would not he conceive that that friend was authorised to deliver him *a message*, and settle every point and punctilio relating to a duel? Whatever understanding he may have of it now, he would understand it differently from what he has said, if his own feelings were concerned.

Mr. Strong, the only witness of the proceedings of the friend charged with these powers, has deposed in so many words, that he did emphatically and explicitly convey a challenge over and over again: but you are asked, if this was the case, why was an apology required in the second

interview, and why did not Mr. Van Hook also understand what passed in the second conversation to be a challenge? On the other hand, I ask you, gentlemen, if there was no intention of delivering one, would not an expression such as Mr. Van Hook has sworn fell from Mr. Strong, that he was no fighting man, and that he was a father of a family, have called for this explanation from him, "Sir, you misconceive the object of my visit; I am not come to give a challenge; and if you think so, you have mistaken me." And indeed it is beyond a doubt that one was given, unless you intend to fix upon Lieutenant Renshaw the foulest imputation of falsehood and vain boasting in his letter that has been read to you. Would not an officer of the navy scorn to boast of having given a challenge when he had given none; and to publish a man as a coward for not accepting what never had been offered? But it is asked, if he did do so in the first interview, why should the matter proceed further in the way of explanation? Why? Because Mr. Strong did wish for a reconciliation. He was determined not to fight; but he wished to satisfy himself and Mr. Renshaw as to the publication, and to afford every honourable means of satisfying the latter, short of fighting. In the mean time he says, I did write something, but I have not seen it in print: I therefore cannot with discretion admit it to be mine till I have first looked at it. If it be the same paper that I wrote, I will admit it. This was the basis of the negociation, and therefore the matter was postponed.

Besides, its being clearly deposed that Dr. Marshall did deliver a challenge, Mr. Strong has told you also, that on the latter day Dr. Marshall did not speak as precisely as on the former, but more by reference to what had already passed. In that you have a complete clue to the testimony on the other side. It seems that Dr. Marshall had been

advised by Commodore Rogers to be very cautious what terms he used; and Mr. Van Hook had himself cautioned him not to speak so plain as to let what he said be construed into a challenge in law: from this the necessity of referring to the message already conveyed. And to that gentleman, who was not present at the previous conversation, it is possible that as what passed before was without his knowledge, so every reference to it might not have been noticed, nor so clearly understood as it was by Mr. Strong, to whom alone it was addressed.

There is however an attempt to set the two witnesses against each other, and to persuade you, gentlemen, that if you believe the one you cannot believe the other. I should be extremely sorry to acknowledge that conclusion; because if you cannot believe both Mr. Strong and Mr. Van Hook, you cannot believe both Mr. Van Hook and Lieutenant Renshaw; the latter of whom has published precisely what Mr. Strong has sworn to, and because in my soul I am convinced that they both deposed with truth, to the best of their recollection and belief. In fact, I never saw an attempt to put two witnesses in confrontation of each other with less ground. The principal contradiction is, as to what took place when they were passing each other in the street, and a very slight one indeed it is. Mr. Strong said, "Your client is chuck full of fight;" and Mr. Van Hook replied, 'Has he challenged you?' Mr. Van Hook adds, that Mr. Strong, who was at that moment passing on his way, answered in the negative: Mr. Strong says, on the contrary, that he has no recollection of that answer, but admits that he parried the question. This is not a contradiction to invalidate the testimony of either. It is used however as an argument, that if Mr. Van Hook was correct in his testimony, no challenge was given. I admit no such conclusion. Mr. Strong might well have answered so, from haste, inat-

tention, or from not distinctly hearing. He was in a hurry, and spoke without stopping to consider.

But grant that it were otherwise, and that he did understand and pay attention to the question, yet a man who is challenged, and is determined to refuse the invitation, may have a certain kind of false pride to restrain him from publishing what, however right, might produce an ill-natured sneer from those (I fear too numerous) who think it more honourable in such cases to violate the laws of their country than to observe them. Therefore Mr. Strong might not have thought it his business to sound through all the corners of the city a thing that would be turned against him by his enemies; and which, it would be sneeringly said, he had divulged for the purpose of being bound over.

This circumstance has been used for two purposes: One to shew Mr. Strong's bad recollection; the other to impeach his veracity. As a proof of his bad recollection, the observations I have made shew it can have no weight. You have no reason to doubt his veracity, unless you are persuaded, contrary to Lieutenant Renshaw's publication, that he never did receive a challenge. His answer to Mr. Van Hook would not be enough to impeach his veracity, however deliberately uttered, for he was not then upon his oath; and there are few men that would not have answered the same way, considering how many there are, who although they dislike fighting, would not like to have it published that they had been challenged, and declined it. Is his not choosing at that moment to avow it, evidence then that he had not received a challenge? I think you cannot say it is.

The next ground of discredit is, that Mr. Van Hook cannot recollect, in the conversation at which he was present, any expressions that amounted to a challenge. To that I answer, that Mr. Van Hook was not present at the first interview; and whatever his opinion on the conversa-

tion might be, he has testified to expressions that will enable you to form yours. What is the meaning I ask you of this expression, which he admits he did hear from Mr. Strong—" I am a father!" Is there any other phrase so descriptive of the feelings of a man who means to say, I will not risk my life? He could not mean to say, I am a father, and therefore I will make no apology. Would an apology have brought desolation on his house? Would it have made his wife a widow and his children fatherless? Whence then the allusion to those ties that hold us by our heart-strings? Because going to the field of battle, and leaving an unfortunate family, were the ideas that would first suggest themselves in combination to a father; and these words were the true language of a parent of a numerous offspring, that was challenged to put his existence at hazard. And when Dr. Marshall replied, " So am I too a father, yet I would scorn to take advantage of that circumstance to screen me if I had offended any gentleman," what did that mean?. That appeal which was made and reciprocated to the dearest connections in life, had no sense—could have no application, but to a single combat; and could not have been uttered but to repel the idea of a duel. The answer, " I am also a father, but would not take shelter under that excuse"—does not that expression, sworn to by Mr. Van Hook himself, shew to you, past all doubt, that a challenge, and nothing less, was understood by both the parties. But further, when they were going to part, Dr. Marshall told him, Since you will not give honourable reparation you must therefore expect to meet his resentment. The expressions testified to by Mr. Strong are more forcible: he says the words of Dr. Marshall were, " If you will not apologise or *meet* Mr. Renshaw, you must expect his resentment."

If you agree with the other gentleman, the word *meet* means nothing; but in the sense given to it by Mr. Strong, it is consistent with the whole previous transaction, and with the subsequent publications by Mr. Renshaw himself, where so much is said of *courage* and *cowardice*. It is a technical expression, and every man that hears it, knows what is meant by it. Further, every person who is conversant with the language of duelling knows right well what is meant by *honourable reparation*. The counsel for the defendant tell you it would be more honourable to make an apology than to refuse it; but is that what would be considered so by officers such as their client? suppose he had employed other terms of *usage* in duelling, as, "Sir, you must give the *satisfaction of a gentleman;*" you might still be told, that meant an apology, and could not mean a challenge; thus every term by which challenges have been conveyed since duelling was first practiced, might be explained away and the law reduced to a dead letter.

There are words, however, technically appropriated to certain purposes, and which can only be judged and received according to the habitual acceptation amongst those that use them. Such are the words in question. The delicacy, refinement, and urbanity of those who practice duelling; the romantic etiquette of giving and receiving challenges, never would admit of the word sword or pistol. The finest terms, and the nicest and most polished phrases, are uniformly selected to express the most resolute defiance. All coarser or grosser expressions, give place to these. Therefore when you couple that observation which you know to be true, with the allusion to Mr. Strong's situation as a parent, then I ask you to say upon your oaths what you believe that honourable reparation was which concerned and awoke the feelings of a father? You will not surely

trifle with the meaning of words; and if you do not, can you doubt that this expression alluded to a call to fight a duel? And, gentlemen, it is a singular situation in which I am now placed, when I am not only to defend the character of my own client, but also to exculpate the defendant, his adversary, from the most disgraceful charge that a man of honour could have to answer for—that of boasting of feats of courage that he had not performed, and to that end publishing wilful falsehoods of another. The counsel are doubtless warranted in labouring as they do for his acquittal: they are right in endeavouring professionally to save their client; but if we were to take them at their word, what conclusions are we forced to draw touching his honour and veracity? Why reproach Mr. Strong with cowardice if he had not sent such a message if as he himself had received from any other gentleman he would have thought it the greatest of all disgrace to have regarded in any other light; and if he had not answered it in that sense, he would have taken to himself the reproach he for the same cause cast upon Mr. Strong, in those very letters which we say amount of themselves to full proof of his having passed a challenge, and upon the strength of which, he addressed the public in these words:

"To the justice of this appeal *on his courage*, and which was *again repeated by my friend in still stronger terms*, he was equally insensible, and with that *cowardice* which always marks an aggression, he positively refused the *reparation* demanded." Thus, for fear that the letters should not be sufficient to prove to the public that Mr. Strong was challenged, or lest Mr. Strong should be able at all to explain it otherwise, he ratifies the still stronger terms used by his friend in his personal interview with that gentleman. And the counsel are now, after all this, reduced to the ne-

cessity of arguing that there was no challenge given, or intended, either in writing or by word of mouth!

Did you read this publication, gentlemen, when it was first made? If you did, I ask you, before you knew that it ever would be the subject of a trial, what did you think these words implied? And if Lieutenant Renshaw himself could be made an evidence, what do you think he would say he understood, and intended to express by these words, but that he had sent a challenge, and that it was refused? Is this, then, the defence set up for Mr. Renshaw, that he was a braggart and a boaster—that in order to pass for a brave man, and to get credit with the world for having done so bold a thing as to challenge Mr. Strong, he published that gentleman for having refused a challenge which now his counsel say he never sent nor intended to send. Gentlemen have you ever heard of posting a coward? How is that done? By publication. And when you post a man as a coward, what does the publication state? That the writer sent him a challenge and he had not the courage to accept it. It would be preposterous to understand that an officer had published a man for want of courage till he had first made proof of his courage by trying it. So in this publication he avows, and therefore as far as relates to you, he proves, that he has done so.

But we are now told that courage consists in making an apology! I ask you, gentlemen, if you think that is the courage, the want of which Mr. Renshaw meant, by this publication, to impute to Mr. Strong? Was it that he had not courage to beg pardon? No. What then does this paper avow under the hand writing of Lieut. Renshaw? That he did authorise Dr. Marshall to make an appeal to his courage as a duellist; for if it alluded to an apology, he would naturally have said, I authorised my friend, Dr. Marshall, to make an appeal to his justice, to his candour, but not to

his courage. Why did he bring in so pointedly the word *courage?* Because the refusal to make an apology was not what he reproached Mr. Strong with, but that he declined to fight.

There is no instance of its being notified and published in this manner by an insulted man, that his adversary refused to make an apology. No, the meaning was this. How does that man pretend to stand upon high and respectable ground in society when he is a coward, as I now publish him to be, for I sent him a defiance and he dare not fight me. This is the greatest stigma amongst those who accustom themselves to consider courage as almost the only virtue that man can possess. This is what is always meant by posting in publications of this kind. I made an appeal to his personal courage; his sense of danger was stronger than his sense of honour, and he refused to come to that decision by which his courage could be established.

Once more let us advert to his own words—"To the justice of this appeal on his courage, and which was again repeated by my friend in still stronger terms, he was equally insensible, and with that cowardice which always marks an assassin he *positively* refused the reparation demanded.

Now if Mr. Strong was the most discredited witness that ever appeared in court, and though millions of attornies had deposed against his character, could you still say upon your oaths that he was not challenged, when the very party accused comes forward and publishes, under his own hand, that he repeatedly called upon him and he was such a coward that he always positively refused?

Mr. Strong says that in the second conversation Doctor Marshall only referred to what had passed in the first. Mr. Vanhook says he was not present at the first. Can you then venture on that evidence to say Dr. Marshall ever delivered a challenge, when the whole continent of

America, wherever this paper has circulated, has already pronounced that he did?

And let me ask you, is Lieutenant Renshaw to have full credit with the duellists of the community, for having sent a message to Mr. Strong, and an acquittal from those who are bound to enforce its laws, because in truth he never did so? Suppose you liberate him by such a verdict, and let us follow him on his return to his companions and brother-officers: How will they laugh at such proceedings in a court of justice? Will he not represent his trial to have been a perfect farce? "My publication in the Advertiser," he will tell them, "was first read, and I began to think the day was lost—but lawyers are the finest fellows in the world at a dead lift—My counsel got up, and in the very face of my publication, they contended with the utmost gravity of countenance, and as vehemently as if they were in earnest, that I had never sent a challenge—they abused that poor devil Strong like a pickpocket, so that I almost pitied him, and humbugged the jury; and they, good men, God bless them, returned with a verdict that I had never sent a challenge!!"

I confess to you, gentlemen, it was to me a mortifying thing in the course of this trial, to find gentlemen known to be in professional hostility with my client, called up and arrayed against him. The witnesses who were called are still young. If they live to the age of Mr. Strong, perhaps in the collision of business, they may make enemies for themselves; and if they do, God knows what opinion of their character those enemies may express. However I will do them the justice to state that none of them went so far as to say that Mr. Strong's reputation was that of a man not to be believed upon his oath; the most they said, is that they (his enemies) would not believe him as much as they would believe Mr. Van Hook (their companion

and friend). I think therefore that the defendant has perfectly failed in the attempt to impeach the character of Mr. Strong; and the best thing he could now do in order fully to vindicate his own character, would be to take to himself the credit of avowing his own act, and saying in the open court, This is too much; the desire of acquittal has led me too far—I cannot as an officer and a man of honour consent that the character of even Mr. Strong should be ruined for his stating what I know to be truth. I did send him a challenge: be the consequences what they may, I will scorn to deny it, and to assist in unjustly destroying the reputation of any one.

Indeed, gentlemen, I have been very much mortified to find that such a charge as want of credibility upon oath should be made or insinuated against a member of the bar by any of his brethren, in consequence of the petty altercations and squabbles of our business. Mr. Strong may be an unamiable and unaccommodating practitioner—his strictness may have given offence and made him enemies; but will those things justify his enemies for bringing forward so foul a charge against a gentleman whose veracity on oath was never before impeached, and whose reputation is one of the means of his subsistence. Professional men should be perfectly aware that the character of a professional man is as precious to him as his life; and that to make a charge of this kind is almost tantamount to a charge of murder. I confess I do not like that advantage should be taken of this opportunity to throw dirt upon a member of the profession when it does not seem called for by any necessity, nor excused by any apparent utility—for our case stands upon written testimony—upon the very avowals of the defendant, and not at all upon the character of the prosecutor.

But Mr. Strong has been also ridiculed as a scholar and gentleman, and treated as a fool! To all that it would be nugatory to reply, for it has nothing to do with the question. A challenge has been sent, and if he wrote ever so badly, it is no warrant for challenging him that his stile of writing does not please. I never read the publication in the Commercial Advertiser, and am not prepared to enter into a critical defence of its merits; besides that I think it would be trifling with the time of the Court and Jury. If it was ridiculous Mr. Renshaw might have laughed at it. If it was libellous he had the law to redress him: the question then is, shall a man who, in common with every other, has a remedy by law, be authorised to treat that law with contempt, and seek revenge by the point of his sword.

I will not discuss the injury imputed to Mr. Strong by that publication, for be the amount of it what it may, the law is to be maintained. He has a right to it, we have a right to it, you have a right to it, and therefore you are bound to support it, and to render a verdict according to its directions. For the same reason I shall decline making any reply to the observations of the like nature made on the explanation given by Mr. Strong to Dr. Marshall. And what, indeed, renders those observations the less important to the matter you, gentlemen, are sworn to try, is this, that that explanation which has been so severely criticised, was not delivered till the 29th, the day after the challenge, and therefore can in no shape be an excuse or justification of it, for the challenge is proved to have passed on the 28th.

One thing, however, which has resulted from those observations, gives me the most sincere and heartfelt pleasure; I allude to the strong and pointed disapprobation expressed by the opposite counsel, of those who do not hesitate to vilify private character, and sacrifice the peace and prosperity of individuals for the sake of decrying and injuring the

government of the country. It does them honour, and when I consider their weight and influence with their own political party, I am led to hope that it may produce the most salutary consequences. Heretofore, indeed, short as is my experience in this country, I have thought I saw attempts to blast individual reputation, and to ruin men in their fortunes and professional pursuits, merely for the sake of a favourite party, or a favourite cause—but henceforth I shall take for granted, that every attack upon private character, which I may happen to read in a newspaper, is written in good faith and as true as the gospel. But notwithstanding my implicit confidence in the good effects that will arise from the unequivocal declarations of my learned friends, perhaps others may be found less credulous, who may even hereafter be inclined to suspect that if every party writer that may load the columns of his favourite paper with private scandal and abuse, were compelled to avow his motives without disguise, the disclosure would present an abominable mass of corruption and crimes of infinitely greater enormity than can by possibility be inferred from what those gentlemen have so severely reprobated.

We come now to the last question. The defendant is indicted in two several indictments. In one it is laid that he is a citizen of the state of New-York ; in the other that he is not so. The Court is well aware that the difference is on account of the punishment, and the diversity of the punishment will afford a clue to the interpretation of those words " citizen of the state of New-York." If the defendant be convicted as being a citizen of this state, his punishment will be nothing more than the incapacity of holding any office ; but that would be no punishment to one who could not hold any office in this state whether or not.— Therefore the object of the law was to devise a punishment for him also who, not happening to be an inhabitant of this

state, might otherwise commit with impunity the same crime for which the citizen of the state was to be punished by disfranchisement: and this was fine and imprisonment in the state-prison made discretionary in the Court according as circumstances might requre: but still the power of the Court was limited at the very utmost to five hundred dollars fine and seven years imprisonment. This provision was manifestly intended to deter those to whom the penalty of disfranchisement in this state would have been a jest. It is said by the counsel on the other side, that every citizen of the United States, upon coming into this state, becomes a citizen of it. I think, however, that a citizen of this state, intended by that statute, is a resident, having his domicil in it, and who has qualified himself for voting in some of those cases where a vote can be given for the choice of public officers, or touching the government of the state. It is that only that affords the constitutional distinction: but it never has been held that a resident upon compulsion, or only at the will of the government, and merely accidentally stationed or quartered there, subject to be ordered away by command of the executive at a moment's warning, without fixture or establishment, should by that circumstance alone acquire a domicil.

The Court. Mr. Emmet how do you ascertain that he is a resident by compulsive orders? He may be under orders and yet a citizen.

Emmet. If any person be sent upon a mission to a foreign country, as long as he remains there on that mission, no length of residence can give him the right of citizen there. It is even carried so far that he stands as to his children and every other purpose as a citizen of the country from whence he came, and so long as he continues in that situation, never can be one of the country where he resides.—Mr. Renshaw's station is the navy-yard; it is true he boards

on land in this city or elsewhere, because he cannot board in any other way. He must board somewhere; he must eat; but no domicil results from that. He has no house, no vote, he pays no taxes.

Suppose a person coming here from any of the neighbouring states on business or pleasure for a week or fortnight, intending to go back, and that in the interval he falls into a quarrel and sends a challenge, what is then the penalty? that he shall not hold any office in a state where he never means to live or hold any. Is that any application of the penalties of the law, according to the intentions of the Legislature? Mr. Renshaw then is in the same situation—Would it be any penalty upon him to hold no office in a state where he never was before and possibly never may be again. To what would such a construction serve but to render the law ridiculous?

The Court. A citizen of one state removing into another becomes a citizen of that other state when he removes. Your argument is that he is here compulsorily, or accidentally, but I do not feel how you establish that.

Emmet. Certainly any citizen of the United States has a power of removing from state to state, and may go to any one he pleases, and there acquire the right of exercising all the functions of a free or native citizen.

The Court. The evidence is that he has been here for a year past, and within the limits of the state.

The Court here read the law.

The only question is whether his situation here as an officer disabled him from becoming a citizen.

Emmet. This is a remedial law, and the intention of it is that the party who has not acquired a domicil, paid taxes, or been qualified thereby to vote for public functionaries, and whom disfranchisement cannot affect, because he has no franchise, cannot be termed a citizen, for it is plain that

each class of offenders against this law is meant to be punishable; he who has rights, by losing them—he who has none, by imprisonment and fine. The defendant here has no rights to lose, and the other penalty alone can reach him.

It may be said there is inhumanity in pressing this. We answer, that after conviction the court will have a discretionary power which we cannot doubt but that it never will abuse; and by the court that matter may be regulated.

Gentlemen of the jury, you are called upon to enforce a law that has been adopted to remedy an evil, which after many experiments of other laws, has been still found without a remedy. You fathers of families, are you peaceable members of the community, or are you prepared to say to all the world, *We countenance duelling:* we mean to promote it not to punish it! You must punish challenges, or duels will ensue; and if duels are permitted, deaths will inevitably follow; and were you to acquit the defendant, and that any deaths should hereafter happen which might touch your hearts as parents, kindsmen, or friends, more nearly than my words now can, you will then perhaps regret the verdict you have given, and the encouragement you have shewn to false honour and to the contempt of religion and law. Jurors must repress duels, or punish murders, or parley with their oaths.

You may have heard of Captain Campbell, lately executed in England. He was a father of a numerous family: much interest was made in his favour, and the testimony of the most respectable members of his profession given in his behalf, as a man of worth and good conduct—but it was in vain. He had challenged—he had fought—he was found guilty—the enormity and prevalence of the practice required a striking example—he was torn from his family, and made a sacrifice to the laws he had offended, and the false notions

under which he acted. Do you not see then how much mercy there is in punishing the sender of a challenge, and how much calamity may be avoided by the timely interposition of the law. Think upon all the consequences, if men, grave, sedate, and respectable like you, proclaim to the world, that the law to prevent duelling is to have no operation; and that the man who chooses to set it at nought, may safely count upon impunity.

Experience shews that this crime must somehow be repressed. In England it is only repressed by death. In this country there is a milder remedy, which is applied to it in its first shape. If this milder law cannot be made to answer, more terrible must follow. It would be unmerciful to hesitate, in a case where there is nothing to create a doubt or to distract your judgment. This is such a case; and in this case you are to say whether you will or will not lend your succour to give peace to the community, and to restrain a crime which has already grown by impunity and countenance to a most alarming degree.

The Judge delivered his Charge to the Jury as follows:

GENTLEMEN,

This case has been so ably argued by the counsel, and the facts are so amply before you, that little remains for me to say upon the testimony; every part of which must be fresh in your recollection.

Of the importance of this case you must be well aware. The law under which the charge has been preferred, was enacted with the view of repressing an offence baneful to society: and if you find evidence before you sufficient to support the indictment, you will not set an example that would frustrate the intentions of that law. On the other hand, the desire of giving effect to a law, however useful to the community of which you are members, ought not to

prejudice your minds against the defence of the accused. You will be governed by a temperate and unbiassed view of the testimony, and be guided by that alone in the verdict which your conscience and your best judgment tell you you ought to give, whether it be of conviction or acquittal.

The evidence may be divided into two branches:

1st. As it respects a written challenge.

2dly. As it goes to prove a verbal one.

That touching the written challenge has been read to you, and is in these words:

Here the learned judge read the letter of the 28th of October, in which Mr. Renshaw informs Mr. Strong that he has employed the service of his friend Dr. Marshall, as the medium of communication between them; and gave him ample authority to act in such manner as appeared to him most conducive to his honour and feelings: (see page 8, and continued.)

It is a fact, and the Court feel it as a duty, to state, that communications in writing, with a view to meetings of this kind, may be made in such a manner as not to express directly a challenge, and yet fully to convey the idea. Whether this note, connected with the other writings and parole testimony, warrants the conclusion that a challenge was intended, is for your determination.

Commodore Rogers appears to have been consulted at a period anterior to the sending of these notes, and to have had a conversation with Dr. Marshall; and his evidence goes to shew that the intention was not to send a positive challenge, or any message that could be so construed; and he recommends that care should be taken in that respect, and that they should consult with a professional man. How far this testimony ought to go to enable you to make up your minds, it is not the province of the Court to say.

As to the parole testimony, it is to this effect: Mr. Strong declares, that in an interview with Dr. Marshall, he did in explicit terms challenge him to fight a duel; that he answered, that he was a father of a family, and that his principles were against duelling. The conduct of Mr. Strong in this instance, instead of being reprobated in society, is, on the contrary, to be commended. Whether he has exactly stated the facts as they passed, or not, is another question upon which you must exercise your judgment; for the jury are to judge exclusively of the credit due to the witnesses.

There is an apparent contradiction between the testimony of Mr. Strong and that of Mr. Van Hook. Mr. Strong testifies, that he understood the message delivered to him by Dr. Marshall to be an explicit challenge to fight; but he says it was more unequivocally so at the former interview than the latter; and in the latter rather by reference to the former. Mr. Van Hook says, that to his hearing and to his understanding, no such challenge passed. But it should be considered that Mr. Van Hook was not present at the first interview.

There is another circumstance urged to discredit the testimony of the prosecutor—that when Mr. Van Hook met him in the street, and entered into conversation with him, he asked him whether Lieutenant Renshaw had sent him a challenge; to which Mr. Strong's answer was, no not quite, or not exactly a challenge. How far that answer given as it were in the act of walking along, should weigh to destroy the credibility of Mr. Strong's testimony, is again for you to decide. You have now the sum of the parole testimony, upon which the Court can only observe to you, that when witnesses stand before you in such a situation as that their testimony seems to clash, you must reconcile them if it be possible, rather than confront them, for that is the most

charitable course. If however you cannot in reason reconcile them, and you are bound to give credit to one to the exclusion of the other, there you must have recourse to all the relative circumstances, and make up your judgment from a discreet and prudent view of them.

The punishment which this defendant might incur in case he was found guilty under one or the other of these indictments, has been used as an argument which should operate upon your minds: but whatever be the punishment ordained by the law, you, gentlemen, are to give a true verdict according to the evidence. Nevertheless the Court for your satisfaction will give its opinion briefly upon that question. By the constitution of the United States, a citizen of any one becomes a citizen of any other state, by the mere act of removal into it. It appears by the evidence, that Mr. Renshaw has resided for a year occasionally in this city, but constantly within the territory of the state of New-York. This, according to the opinion of the Court, makes him a citizen. If he had his family here, he certainly would be a citizen; and the difference of his not having a family, does not seem so essential as to exclude him.

With these remarks, gentlemen, I leave the case entirely to you.

The jury withdrew, and after remaining about an hour, returned with a several verdict upon both indictments, of NOT GUILTY.

After the recording of the verdict, it was moved that Dr. Marshall should be discharged, inasmuch as the indictment against him could not be supported; it being now proved that there was no challenge sent, and consequently there could have been none delivered. The acquittal of the one therefore it was said operated to the acquittal of the other.

It was upon these grounds ordered that he should be discharged without bail.

It was then urged on behalf of the prosecutor, that a complaint for a libel had been laid before the grand jury. Mr. Strong stated that he had been before the grand jury, but whether they had passed upon the matter, did not appear; but that he intended, if it was so, to renew his complaint before another. And he further stated, that from the conduct of persons in the eye of the court, it might be dangerous for him to go home to his own house: he therefore prayed that surety might be taken from both the defendants to keep the peace towards him. Mr. Strong made affidavit that he was in fear of bodily violence and harm: but as the gentlemen had committed no act of violence, they were bound on their own recognizance five hundred dollars each, *without sureties*, to keep the peace, and be of good behaviour towards all the citizens, and particularly towards Joseph Strong, Esq. attorney at law, until the next session of Oyer and Terminer.

APPENDIX.

The following article is the acknowledged production of Joseph Strong, Esq. which appeared in a paper printed in this city, called the Commercial Advertiser: it was introduced by Strong in that print as a prefatory dissertation to Petty's Protest, and embraced those offensive strictures to which Lieut. Renshaw excepted and demanded honourable satisfaction.

MR. LEWIS, [*Editor of the Commercial Advertiser.*]

"To those who will read (as I trust they will with abhorrence and detestation) the following statement of a few of the most wanton acts of cruelty, inflicted by a petty strippling in command, who "*feels power and forgets right,*" upon one of our own citizens, in the peaceable pursuits of his lawful business, within a few miles of his own door, now answer the plain question whether they are yet satisfied with the present embargo and gun-boat policy of our administration. I am informed that divers other acts of wanton abuse as well as cruelty ensued, which are not detailed in Capt. Petty's Protest, as irrevelant to his purposes. For myself, I want language to express my regret that such acts of oppression can with impunity be practised upon our fellow-citizens, without a speedy and adequate resistance. I trust, however, that in this instance, but one voice will be heard, and one general wish be expressed, that the culprit will, without delay, be removed from office; and that the abused captain will speedily be remunerated with ample damages by the verdict of a jury of his country, to which I think he may safely appeal."

"A CITIZEN."

PETTY'S PROTEST.

By this public instrument and declaration of protest be it known and made manifest to all whom it doth or may concern, That on this second day of September in the year of our Lord one thousand eight hundred and eight, before me George W. Strong, a public notary in and for the state of New-York, duly commissioned and sworn, residing in the city of New-York, personally came and appeared David Petty, master and commander of the schooner Speedy, of Brookhaven, who being by me duly sworn upon the Holy Evangelists, did depose, protest and say, That on the 19th day of August last past, he was sailing in the said schooner on the south side of Long-Island, bound from New-York to Coriches in Brookhaven, and when opposite Gilgo Gut he was fired at and brought to by gun-boat No. 40, commanded by James Renshaw, who sent a barge on board the deponent's schooner, and after examining her permitted her to proceed on her voyage. That after she had proceeded about one mile to the windward, he was again fired at and compelled to bear away and come under the lee of the gun-

boat, when the commander demanded the deponent to come on board and pilot him into Fire-Island inlet, which the deponent consented to do for ten dollars; to which the commander replied that "he would be damned if he would give him ten cents," and added that if the deponent did not obey, his schooner should not be permitted to leave the gun-boat; whereupon the deponent persisted in his refusal; the said commander sent his barge on board the schooner, with orders to take by force the deponent or one of his men out of the schooner and bring him on board the gun-boat. That the deponent was thereby compelled, without his consent, to leave his own vessel and go on board the gun-boat, where he was kept and detained three days. That not being able to beat up to Fire-Inlet, they were obliged to go into Gilgo Gut, with the navigation of which the deponent was totally unacquainted, and on his mentioning that circumstance to the commander, was told by him, "that if he, the deponent, run the gun-boat aground he should be shot." That having passed the Gut in safety, and the gun-boat anchored in the bay, the deponent was on the following day, by order of the said commander, *put in irons, with handcuffs on his wrists and shackles on his legs*, and kept so in irons for *one whole day and night*, during which time he had very little refreshment and was treated with much abuse by the said commander. And the deponent did further protest and swear that he knows of no reason for such treatment from the said commander, except his wishes to detain the deponent on board until such time as he should see fit to go to sea, and require the deponent's aid in navigating the gun-boat out of the Gut. That on Sunday the 21st day of the aforesaid month of August, about noon, some persons were coming on board the said gun-boat while lying at anchor in the bay, and before they reached her, the said commander ordered the irons to be taken off the deponent. That in the afternoon of the same day the said commander wishing to go on board of a brig that lay at no great distance on the beach, the deponent requested and obtained leave to go with him. That after visiting her, he was ordered by the commander to return on board the gun-boat which the deponent refused to do—whereupon the commander presented a sharp pointed cane at the deponent's breast, and thrust the same at him several times, in order to compel him to go. He then ordered two of his men to seize the deponent, and to tie him and take him on board the gun-boat. That they did seize and throw him down—whereupon a person belonging to the said brig interfered, and took up a large maul with which he threatened to strike them unless they would release the deponent; that they then let up the deponent, after which the commander abused him with very insolent and profane language, threatening that he would *cut him in mince-meat, and destroy his schooner*. He then ordered one of his men to stand by the deponent with a loaded musket and to shoot him through in case he offered to stir, while he, the commander, could go on board the gun-boat and get a reinforcement of men, in order to compel the deponent to go on board the gun-boat, taking the said centinel with him, and while he was gone the deponent procured two men of his acquaintance from the said brig to carry him in a boat on board his own vessel, then lying

at Fire-Island, about twelve miles to the eastward, and so elude [the said commander.

Whereupon, I the said Notary, at the request of the said David Petty, did protest, and by these presents do publicly and solemnly protest against the unjust and unlawful detention of the said David Petty, and the oppressive and tyrannical conduct of the said James Renshaw, and all damages, losses and injuries which thereupon ensued. In testimony whereof, as well the said deponent as I the said notary, have subscribed our respective names to these presents, and I have hereunto set my seal of office the day and year first above written.

(Signed) GEORGE W. STRONG.

DAVID PETTY.

NAVY DEPARTMENT, September 7, 1808.

SIR,

The enclosed paragraph which contains the protest of David Petty, master of the schooner Speedy, of Brookhaven, so seriously implicates Lieutenant Renshaw, that a minute investigation of the circumstances becomes indispensible. You will, therefore, sir, institute a particular inquiry into all the circumstances of the case and report them to me, that such proceedings may thereupon be had as may appear right and proper.

I am respectfully,
Sir, your most obedient,

(Signed) RT: SMITH.

Commodore John Rogers,
New-York.

I certify the above to be a true copy.

LEWIS FAIRCHILD, Sec'ry.

NAVY-YARD, NEW-YORK, Sept. 24, 1808.

SIR,

By authority vested in me by the hon. the Secretary of the Navy, I hereby direct that you assemble a court of enquiry on board the U. S. bomb-ketch Etna, on Monday next, the 26th inst. at 9 o'clock A. M. composed of [beside yourself, and at which you will preside] Lieuts. Charles Ludlow and Samuel Angus, at present under my command, to enquire minutely and particularly into the conduct of Lieut. James Renshaw, commanding the U. S. gun-boat No. 40, on charges alledged against him by David Petty, master of the schooner Speedy, of Brook-Haven, in form of a protest, made by the said David Petty, before George W. Strong, a Notary Public, of the City of New-York, on the second of September, instant; and further that you do investigate each and every part of said Lieut. Renshaw's conduct, touching each and every particular item of said Petty's protest, of which I herewith enclose you a true copy, as it is exhibited to the public in and through the medium of a newspaper "printed by J. Mills for Z. Lewis," and entitled "The New-York Commercial Advertiser."

You are directed to appoint Mr. Samuel R. Marshall, surgeon of the hospital and fleet under my command, to officiate as judge advo-

cate; and you are hereby directed to transmit the proceedings of the case in question to me, in order that I may forward the same, without delay, to the honourable the Secretary of the Navy, to receive his further orders thereon.

I have the honour to be, &c. &c.

(Signed) JOHN ROGERS.

Lieut. Jacob Jones.

PROCEEDINGS OF A COURT OF INQUIRY,

Held on board the U. S. Bomb-Ketch Ætna, by order of John Rogers, Esquire, commander in chief of the United States naval force at New-York, on the 26th day of September, 1808, for the purpose of investigating the conduct of Lieut. James Renshaw, on charges alledged against him by David Petty, master of the schooner Speedy, of Brook-Haven, published in form of a protest in a newspaper entitled "The New-York Commercial Advertiser," printed by J. Mills, for Z. Lewis.

Members of the Court,

JACOB JONES, Lieut. and President.
CHARLES LUDLOW, } Lieuts. and Members.
SAMUEL ANGUS, }
SAMUEL R. MARSHALL, acting Judge Advocate.

Lieutenant James Renshaw being present, and the members and judge advocate of the court duly sworn; the court proceeded to the examination of testimony touching the charges exhibited against the said Lieut. James Renshaw.

Richard Millikin, master's mate, being called, and duly sworn, states, that on the 19th of August, about 7 or 8 o'clock in the morning, Lieut. Renshaw, in the gun-boat No. 40, brought to a pettiauger schooner, commanded by Petty, and asked him if he was acquainted with Fire Island Inlet; and, as he was bound in, requested him to take the gun-boat in. Petty asked what he would give for taking her in? Lieut. Renshaw demanded what he would ask? Petty answered—ten dollars. Lieut. Renshaw replied, that he would not give him ten cents; but told him he would send a man on board of his vessel, to assist in working her, if he would come on board; and if he would not come, or send a man, he would detain the pittiauger, and follow her in. Petty then came on board, and ordered sail made for the inlet; but as the wind hauled to the east, and the boat made no way, after making several tacks, he advised Lieut. Renshaw to go into Gilgo Gut, as he was well acquainted there, and it was a good harbour. He took the boat in, and after she was moored, he went on shore to gun. He remained on board three days, going on shore during that time frequently, and appeared perfectly well satisfied, and expressed himself that he was well used, even better than he would have been on board his own vessel, as he messed with Lieut. Renshaw.

Question by the court. Did you see any violence used to the person of Petty, such as putting him in irons, or attempting to confine him? *Answer.* I never did. *Q.* Did you hear any threats used at any time by Lieut. Renshaw to Petty? *A.* No. *Q.* From all you have heard

and saw, do you believe that Petty came on board of his free will, or in consequence of threats used by Lieut. Renshaw? *A.* I heard no threats used, and I have every reason to believe that he did come on board of his free will. *Q.* Did you hear Petty at any time express any dissatisfaction at being on board the gun-boat, or ask permission to leave her? *A.* I heard him say that he wished to be on board his own vessel if the wind would allow him to proceed; but I never heard him ask Lieut. Renshaw for permission to go. *Q.* Were you on board all the time that Petty was? *A.* I was. I never left the vessel. *Q.* Were you so situated that if Petty had been put in irons, you must have known it? *A.* I was, and never saw or heard him ordered in irons, and if he had been in irons I must have seen him. *Q.* Do you know that there was a boat sent for the purpose of bringing by force Petty, or any of his men? *A.* No such order was given when the boat was sent for Petty. *Q.* Did you hear Lieut. Renshaw tell Petty that if he run the boat on shore he should be shot? *A.* No. *Q.* You say that Petty recommended it to Lieut. Renshaw to go into Gilgo Gut, and said that he was well acquainted with the passage? *A.* Yes. *Q. by Lieut. Renshaw.* Was I not induced to go into Gilgo Gut by the advice of Petty, in consequence of the wind being ahead, and a westerly current? *A.* Yes. *Q.* Did not Petty whilst on board live with me in the cabin the whole time? *A.* Yes.

Joseph Richardson, gunner, being called and sworn, says, that when Lieut. Renshaw hailed the schooner commanded by Petty, he asked him if he was bound into Fire Island Inlet; Petty answered yes—Lieut. Renshaw then asked him if he would pilot the gun-boat in; Petty replied that he would if he would give him ten dollars—Lieut. Renshaw answered that he would not give him ten cents—Lieut. R. then ordered me to go in the boat, and go on board the Speedy for Petty. I accordingly went on board, and asked him if he would go—he said he did not know, and a man at the helm answered that he would if Petty did not wish to go. Upon which Petty went into the boat, and I asked him if he would have a man on board the schooner; he said yes, and I proceeded to the gun-boat with him. After he went on board I did not hear what was said to him, but he gave orders to make sail, which was done. After this Lieut. Renshaw asked Petty if he had taken breakfast, and Petty went into the cabin with Lieut. Renshaw. After tacking several times to beat up to Fire Island Inlet, Petty advised Lieut. R. to go into Gilgo Gut; Lieut. R. asked him if he was acquainted with the passage—he answered yes, that he had been in several times, and told us to take notice of the passage in case we should wish to go in there again. After we had been in about two days, Petty came down, and was drinking tea with the corporal and myself; he saw a pair of irons for the feet, and either put them on himself, or they were put on by Thompson a marine. He then went on deck with his pipe in his mouth, hopping about to try how he could jump in the irons. The irons were not on him more than fifteen minutes, and were not confined. I heard nothing particular till the Sunday after, when Lieut. R. and Petty went on shore shooting—they landed close by a brig on the beach—they had been on shore about half an hour, when Petty gave his musket up, not having used it, and went on board the brig

with a carpenter who was working on board. A short time after Lieut. R. came, and asked where Petty was--I answered that he was on board the brig. Lieut. R. ordered me to go and call him; I went alongside the brig, and as Petty was standing by the gang-way, I told him that Lieut. Renshaw wanted him to go on board. He answered that he did not intend to go on board again. I returned and reported this to Lieut. Renshaw, and was desired by him to go and inform Petty that he wished to see him. I went and told Petty what I had been desired, to which Petty answered that if Lieut. R. wanted to see him he must come on board the brig. I returned to Lieut. R. and delivered this message to him, and Lieut. R. then went attended by myself on board the brig, and asked Petty what was the reason he would not go and pilot the gun-boat out. Petty answered that he was on shore, and should not go on board again. Lieut. R. told him that as he had piloted a vessel of the United States in he ought to take her out again. Petty replied that he did not know the passage out. Lieut. R. then swore by G—d that as he had piloted the vessel in, he should take her out again, and demanded of the people on board the brig whether they protected the pilot. Lieut. R. then ordered me to take hold of Petty to take him to the boat. I went up to Petty, and endeavoured to persuade him to go on board the boat. He answered that he would not go, and said there was no use of his going on board when he would not be paid. Lieut. R. then gave him his honour that he would pay him as soon as he piloted the vessel out. He replied that he would not go as he did not know the passage out. Lieut. R. had a small bamboo cane which he pointed to Petty, on which Petty seized Lieut. Renshaw; and the people on board the brig ordered me to keep off from separating Petty from Lieut. Renshaw. At that moment one of the carpenters belonging to the brig had taken up a large maul, and was in the act of striking Lieut. R. Petty then let go of Lieut. R. after which Lieut. R. observed that he would take him if he went on board and brought all his men for that purpose. Lieut. R. and myself then left the brig to go on board; and as we were going down, Petty came on the starboard side of the quarter-deck, and damned Lieut. R. telling him he may find the way out as he found it in. Lieut. R. and myself then went on board the gun-boat, and taking two more men, went on board the Speedy, lying at Fire inlet, for the man who had been put on board of her, and we there saw Petty, who asked what boat that was? Lieut. R. was invited into the cabin by Petty. Lieut. R. went down and staid near half an hour. Petty gave the boat's crew a drink of grog and some Indian corn. The boat then put off from the Speedy, and went to the gunning house on shore. After this I saw nothing more of Petty.

Question by the court. Did you or any one who went in the boat on board the Speedy, receive orders from Lieut. Renshaw to bring Petty or any of his crew by force, in case they would not come willingly? *Answer.* No. *Q.* Did you hear any threats or abusive language used at any time to Petty whilst on board the gun-boat, by putting him in irons, or attempting to confine him? *A.* No. *Q.* Did you hear Petty at any time express dissatisfaction at being on board the gun-boat, or ask permission to leave her? *A.* No--he went on shore frequently

gunning. *Q.* From all you saw and heard, do you believe that Petty came on board of his free will, or in consequence of any threats used by Lieut. Renshaw? *A.* I believe he came voluntarily, for another man offered to come if he did not. *Q.* You say that whilst Petty was below drinking tea with you and the corporal, there was a pair of irons put on his feet by either Petty, or Thompson, the marine—are you sure, so far as you have any knowledge of the subject, that Lieut. Renshaw did not order Petty to be put in irons, and that his then being so was not in consequence of that order? A. I am certain that Lieut. Renshaw knew nothing of it. Q. Had Petty at any time irons put on his hands? A. Yes; they were put on by myself for about five minutes, but not confined, to gratify his own curiosity. Q. You have said that Petty told Lieut. Renshaw that he did not know the passage out—did he on going in shew any want of knowledge of the passage? A. No; he desired the men on board to take notice, and gave us marks, one on the beach, and another on Long Island. Q. Did you hear Lieut. Renshaw threaten to shoot Petty if he run the boat on shore in going in? A. No—I was at the helm from the time we bore up to the time we anchored, and heard no threats of the kind used. Q. Did Lieut. Renshaw whilst on board the brig order you or any of the men to seize and tie Petty, and take him to the boat? A. No; Lieut. Renshaw desired me to take hold of him. Q. Did Lieut. Renshaw threaten at this time, or any other, to destroy Petty's schooner? A. No. Q. Was Petty's schooner at this time any way near you? A. No; she lay at Fire Island, and the gun-boat at Gilgo Gut. *Q. by Lieut. Renshaw.* Did you hear me threaten to detain his vessel in case he did not come on board to pilot the boat in? A. No.

George Shields, steward, being called and duly sworn, was questioned by the court.

Were you on board of gun-boat No. 40, when she brought to the Speedy, and a man by the name Petty came on board? A. Yes. Q. Were you on board all the time that Petty was on board? A. Yes. Q. From all that you heard and saw, do you believe that Petty came on board of his free will, or in consequence of threats from Lieut. Renshaw? A. I believe he came voluntarily, I heard no threats used. Q. Did you see any violence used to Petty whilst on board, such as putting him in irons, or attempting to confine him? A. No; to gratify his own curiosity, irons were put on him by John Thompson, and were taken off again in about three minutes. Q. Are you certain, so far as you have any knowledge of the subject, that Lieut. Renshaw did not at any time order Petty to be put in irons, or to be confined! A. He did not. Q. Did you hear Petty at any time express dissatisfaction at being on board the gun-boat or the treatment he received whilst there? A. I did not. Q. Were you on shore with Lieutenant Renshaw when Petty was on board the brig and refused to come off? A. No. Q. Did Petty, whilst on board the gun-boat, appear by his actions or words, like a man who was confined there against his will? A. No.

Edward Ashmore, ordinary seaman, being called and sworn, was questioned by the court.

Were you on board No. 40 when the Speedy was spoke with and Petty came on board? A. Yes. Q. Did you remain on board the gun-boat all the time that Petty was on board of her? A. Yes. Q. From all you saw and heard, do you believe that Petty came on board of his free will, or in consequence of threats used by Lieut. Renshaw? A. He came on board of his free will. Did you see any violence used to Petty, such as putting him in irons or confining him? A. A man forward put irons on him by his own desire, as he wished to see how they would look and feel. Q. Were they kept on him any time against his inclination? A. No; they were not on him more than three or four minutes. Q. Was Petty at any time put in irons by order of Lieut. Renshaw, or did Lieut. R. at any time threaten to put him irons? A. Not to my knowledge. Q. Did you hear Petty at any time express any dissatisfaction at being on board the gun-boat, or of his treatment while there? A. No. Q. Did Petty by his words or actions appear to be kept there against his will? A. No. Q. Are you certain, so far as you have any knowledge of the subject, that Lt. Renshaw did not have Petty put in irons, and that when they were put on, it was done at his own request, and were not kept on against his inclination? A. I am certain that Lieut. Renshaw did not order him to be put in irons, and that the irons were put on at his own desire, and not kept on him against his inclination.

Q. By Lieut. Renshaw. Did you hear me threaten to detain his vessel if he did not come on board? A. No.

Abijah Shepard, corporal of marines, being called and duly sworn, says, that he was on board the gun-boat No. 40, when she spoke the Speedy, and Petty came on board. On hailing the Speedy by Lieut. Renshaw, he asked Petty if he was bound to Fire-Island, and if he was, whether he would pilot him in, Petty answered him yes, if he would give him ten dollors. Lieut. Renshaw told him he would not give him ten cents, and sent his boat along side the schooner, and Petty came on board and ordered sail to be made, saying, there was no time to be lost. After beating some time, and making no headway, Petty advised Lieut. Renshaw to put into Gilgo Gut, as he was acquainted with the passage. After coming to anchor, Petty went several times on shore with Lieut. Renshaw, shooting, and appeared to be satisfied with his situation, as he lived in the cabin, and fared as Lieut. Renshaw did himself.

Q. By the Court. From all that you saw and heard, do you believe that Petty came on board of his free will, or in consequence of any threats from Lieut. Renshaw? A. I believe he came of his free will. Q. Did you know of any violence used to Petty, by putting him in irons or confining him? A. Petty came down forward once, where he saw the irons and put them on his feet. I never saw him have them on at any other time. Q. Was he permitted to take them off when he chose? A. He put them on and took them off himself. He had not them on but a few moments. Q. Are you certain, so far as you have any knowledge of the subject, that Lieut. Renshaw did not have Petty put in irons at any time? A. He never did to my knowledge. Q. Did you hear any threats used at any time by Lieut. Renshaw to Petty? A. I did not. Q. Did you hear Petty express any dissatisfac-

tion at being on board the gun-boat, or of the treatment he received while there? A. He did not appear to be dissatisfied with the treatment; but towards the last of his being on board, expressed a desire to be on board of his own vessel. Q. Did Petty, whilst on board the gun-boat appear by his words or actions to be detained there against his will? A. I cannot say that he did. Q. Who is the officer that executes the duty of master at arms, and takes care of prisoners when they are confined? A. The corporal of marines. Q. Has any one since you have been on board the gun-boat, been confined in irons without the order being given to you? A. No. Q. You say that Petty never was in irons by order of Lieut. Renshaw, but only by his own option, and that he took them off when he pleased. A. Yes.

Q. By Lieut. Renshaw. Did you hear me threaten to detain the Speedy if Petty did not come on board the gun-boat? A. No.

Edward Rice, private, being called and duly sworn, was questioned by the court.

Were you on board the gun-boat No. 40, at the time she spoke with the Speedy? A. Yes. Q. From all you heard and saw, do you believe that Petty came on board of his free will, or in consequence of any threats or force made use of by Lieut. Renshaw? A. I believe he came voluntarily. Q. Do you know if any violence was used to Petty whilst on board, by putting him in irons or confining him? A. I never saw any violence used to him. Petty went forward and seeing a pair of irons, asked Thompson laughingly, to put them on him, which Thompson did, and Petty then endeavoured to walk in them, but finding he could make no hand of it, took them off again. Q. Are you certain, as far as you have any knowledge of the subject, that Lieut. Renshaw did not have Petty put in irons, and that when the irons were put on him by Thompson, the marine, they were not kept on him against his inclination? A. They were not. Q. Did you hear Petty at any time express any dissatisfaction at being on board the gun-boat, or of any treatment he received whilst there? A. I did not —he appeared very well satisfied, and was very free with the men whilst on board. Q. Did Petty whilst on board the gun-boat, as far as you saw of him, appear by his words or actions to be kept there against his will? A. He did not. Q. Did you hear Lieut. Renshaw at any time threaten that if he did not come on board he would destroy his schooner? A. I did not—Lieut Renshaw told him that if he would come on board he should not want for men to work his schooner. Q. Did you hear Lieut. Renshaw make use of any abusive language or threats to Petty whilst he was on board the gun-boat or the Speedy? A. I Did not.

The court then adjourned until 9 o'clock on Tuesday morning the 27th inst.

On Tuesday morning the court commenced agreeably to adjournment and proceeded with business.

Dennis O'Niel, a private, being called and duly sworn, was questioned by the court.

Were you on board gun-boat No. 40 when she spoke with the Speedy? A. I was. Q. Were you on board all the time that Petty was on board? A. Yes. Q. From all you heard and saw, do you believe

that Petty came on board of his free will, or in consequence of threats or force used by Lieut. Renshaw? A. Neither threats or force were used to my knowledge: Lieut. Renshaw told him it was better for him to come on board—I do not know what impression this made on Petty, but I did not conceive that it was a threat. Q. Do you know if any violence was used to Petty whilst on board the gun-boat, such as putting him in irons or confining him? A. I do not; he was in irons, but it was at his own request, and he assisted in putting them on. He also put on my coat, hat and stock, and admired my cue, which he requested me to put on. He also requested me to bring up a musket, and two being brought, he attempted to go through the exercise. Lt. Renshaw was at this time below in his cabin. Q. Were the irons fastened, or kept on him at any time against his inclination? A. They were not fastened; He was at liberty to take them off when he thought proper. I do not think they were on him more than five minutes Q. Did you hear any threats or abusive language made use of By Lieut. Renshaw to Petty at any time.

A. Yes; but it was not on board the gun-boat; it was on Sunday some of the inhabitants of Long Island had come alongside the gun-boat, from a curiosity to see her. In the afternoon of this day Lieut. R. Petty, the gunner, and myself, went on shore with two muskets, for the purpose of shooting. Immediately after reaching the shore, Petty and Lieut. R. entered into conversation with some gentlemen. I went to the beach at that time to shoot, and in about half an hour returned, and saw Lieut. R. with the musket which had been before in Petty's hand. Petty was not then present. Shortly after Lieut. R. told us to get in the boat, and asked for Petty. The gunner told him he was then on board the brig lying on the beach. Lieut. R. ordered him to go and tell him to come, he was going on board. The gunner returned and informed Lieut. R. that Petty would not come. Lieut. R. then went on board the said brig, and desired me to attend him, and leave the muskets in the stern sheets of the boat--he then asked Petty if he was not going on board of the gun-boat. He answered, that he would be damn'd if ever they got him on board of the gun-boat again: Lieut. R. then asked him if he was going to leave him in a harbour from which he did not know how to pilot himself out. Petty told him he might go out as he could for what he cared. Lieut. R. told him to be careful what he was about; that he had piloted one of the United States gun-boats into a harbour, and that he should conduct her out again, as there was no person on board who could pilot her. He said he did not care. Lieut. R. then told him he would give him ten dollars if he would come on board and pilot the boat out, and that he should proceed immediately to Fire Inlet to get his own man. Petty said he would not go: Lieut. R. said he should go, at the same time going up towards him, and Petty immediately pushed him back; and when Lieut. Renshaw came up a second time, Petty caught hold of him and pushed him over a carpenter's bench. Lieut. R. then ordered the gunner and myself to take hold of Petty, which we did, and told him that he should not strike Lieut. R. We used no violence, but warned him if he resorted to any, we should also. One of the men on board of the brig observed at the same time that it was a great shame that Petty did not go on board and

pilot the boat out. I then saw one of the men with a large maul raised behind Lieut. R. to strike him; another man had a saw, and two or three others were armed with billets of wood, some of whom had every appearance of intoxication. Lieut. R. then told Petty, if he would not go with him, he would go on board the gun-boat and bring more men to take him. Petty told him he might bring all the men; he would not go on board the boat again. Both Petty and Lieut. R. used abusive language, the substance of which I cannot recollect. We then went on board the gun-boat, and in about an hour and a half afterwards went in the boat with Lieut. R. to Fire Island, in search of Perkins, the marine, who had been left on board the Speedy in the place of Petty. It was about half after 11 P. M. when we got to Petty's schooner, where we found Petty on board, and the man who had raised the maul. Lieut. R. went into the cabin with Petty, and what took place there I do not know. Petty asked me down to drink something, and when I went down he handed me a jar to drink out of. At that time there did not appear any animosity between Lieut. R. and Petty. One of the men on board of Petty gave us some corn at our departure. We then left them, and saw no further of Petty.

Q. Did Lieut. R. when on board the brig, order Petty to be tied and carried on board the boat, and if so, was there any attempt to execute his orders? A. I heard no such orders given, and no attempt was made to tie him. Q. Did you hear any thing from any of the hands on board the Speedy, when you went with Lieut. R. after your man, that appeared as if they considered that Petty was taken from his vessel against his will? A. I heard no conversation of that nature. Q. Did you hear Petty express any dissatisfaction at being on board the gun-boat, or of any treatment he received whilst there? A. I heard Petty damn the wind, and wish he was on board his own vessel at Fire Inlet; but did not hear him express any dissatisfaction at his treatment—when he was asked to eat forward, he would reply, to use his own words, "he was waiting for a cabin snack." Q. Did Petty whilst on board the gun-boat, appear by his words or actions to be kept there against his will? A. No further than damning the wind, and wishing to be on board his vessel. *Q. by Lieut. Renshaw.* Did you hear me threaten to destroy Petty's schooner if he did not come on board? A. No. Q. Had not Petty permission to go on shore when he pleased? A. Yes.

John Thompson, private, being called and duly sworn, was questioned by the court:

Were you on board the gun-boat No. 40, when she spoke with the Speedy, and Petty came on board the gun-boat? A. Yes. Q. Were you on board all the time that Petty was? A. Yes. Q. From all you heard and saw, do you believe that Petty came on board of his free will, or in consequence of threats used by Lieut. Renshaw? A. I think he came voluntarily; I heard no threats used. Lieut. R. told Petty he had better come on board, he should not want for men to work his vessel in. Q. Do you know of any violence used to Petty, whilst on board the gun-boat, such as putting him in irons, or confining him? A. No. He came down forward one afternoon, and saw a pair of feet irons, and asked what they were? I told him what they were, and he took one of them and put it on his leg, and I put on the other—

he jumped about, laughing, and said he could make no hand of them. Q. Were they kept on him against his will, or was he at liberty to take them off when he pleased? A. The irons had no nail, or any thing else to confine them, and he was at liberty to take them off when he pleased. Q. How long did he keep the irons on him? A. He did not keep them on more than five minutes. Q. Did you see him at any time with irons on his hands? A. No. Q. Are you certain, so far as you have any knowledge of the subject, that Lieut. R. did not at any time order Petty to be put in irons? A. He did not. Q. Did you hear any threats or abusive language made use of by Lieut. R. at any time to Petty? A. No. Q. Did you hear Petty at any time express any dissatisfaction at being on board the gun-boat, or at any treatment he received whilst there? A. No. Q. Did Petty whilst on board the gun-boat, appear to you, either by his words or actions, to be kept there by Lieut. Renshaw against his will? A. No. *Q. by Lieut. Renshaw.* Did you hear me threaten to detain the Speedy if Petty did not come on board the gun-boat? A. No.

Peter Perkins, private, being called and sworn, states that when the gun-boat No. 40, fired a musket and brought the Speedy to, Lieut. Renshaw hailed and asked Petty to come on board and pilot the boat into Fire Inlet; Petty answered yes, if he would give him ten dollars; Lieut. R. said that he would not give him ten dollars, but told him he would send a man on board his vessel to assist in working her in. The boat accordingly went on board, with the gunner, Edward Ashmore, and myself. One of the men on board the Speedy wanted to go on board the gun-boat, but Petty told him he would go himself. The boat returned to the gun-boat with Petty, leaving me on board the Speedy.

Question by the court. Did you or any one of you in the boat, receive orders from Lieut. Renshaw to bring Petty, or any of his men, on board the gun-boat by force, in case they refused to come of their own will? *Answer.* No--Petty was willing enough to come. Q. Did you understand from any of the crew whilst you were on board the Speedy, that it was their opinion that Petty was induced to go on board the gun-boat in consequence of threats, or apprehension of force being used by Lieut. Renshaw? A. No. *Q. by Lieut. Renshaw.* Did you hear me threaten to detain the Speedy in case Petty refused to come on board? A. No.

The court having collected all the testimony adduced on the subject in question, adjourned until Wednesday morning the 28th instant, to give the judge advocate an opportunity to copy the proceedings.

On Wednesday at 12 o'clock, M. the court convened agreeably to adjournment, and the proceedings not being ready, adjourned until Thursday morning at 9 o'clock, A. M.

Thursday morning at 9 o'clock A. M. the court convened agreeably to adjournment, and the proceedings were closed.

(Signed)
JACOB JONES, Lieut. and President,
SAMUEL R. MARSHALL,
Acting Judge Advocate.

[COPY.]

Navy Department, 18*th October*, 1806.

SIR,

Your letter of the 30th ultimo, enclosing the proceedings of the Court of Enquiry in the case of Lieut. Renshaw, has been received.

It affords me pleasure to find that no further proceedings are necessary in this case.

I have the honour to be, respectfully, sir, your obedient servant,

(Signed) R. SMITH.

Commodore John Rogers, New-York.

I certify the above to be a true copy.

LEWIS FAIRCHILD, Sec'ry.

THE END.